



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes            MNSD, FF

### Introduction

This matter dealt with an application by the tenant for the return of double the security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were hand delivered landlord on June 16, 2010.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the tenant entitled to double his security deposit?

### Background and Evidence

Both Parties agree that this month to month tenancy started on June 07, 2009 and ended on May 30, 2010. Rent for this unit was \$800.00 per month and was due on the first of each month. The tenant paid a security deposit of \$400.00 on June 07, 2009.

The tenant testifies that he gave the landlords' agent his forwarding address in writing on May 29, 2010 at the end of the walk through of the rental unit. The tenant states he had cleaned the unit and was told by the landlords' agent that everything was fine but the only thing the tenant

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was required to pay for was the carpet cleaning. The tenant states he agreed to the sum of \$80.00 being withheld from his security deposit to cover this.

The tenant states the landlords' agent called him on June 04, 2010 to ask for his forwarding address again as he had lost it. The tenant states he told the landlords agent his new address again over the phone. The tenant states he did not receive the balance of his security deposit and went to the landlords' agents' house on June 13, 2010 to talk to him about the security deposit and to inform him if it was not paid he would be applying for Dispute Resolution. The tenant states on June 28, 2010 he received a cheque from the landlord which was dated June 15, 2010.

The tenants witness testifies that she was present when the landlords' agent called the tenant on June 04, 2010. She states she heard the tenant repeat his address to the landlords' agent over the phone and the tenant asked her to confirm the postcode.

The landlords' agent testifies that the tenant did not give him his forwarding address when he moved as he told him he did not have it at that time. The landlords' agent states he called the tenant on or about May 30, 2010 but he could not leave a message as his mail box was full. He states he called the tenant again on June 13 and asked for his forwarding address to send the balance of his security deposit. A cheque for \$229.25 was then mailed to the tenant from the landlord on June 15, 2010 and this was cashed on June 29, 2010.

The landlords' agent testifies that he had the carpets cleaned at the end of the tenancy which came to \$100.75. He claims he also had to pay for cleaning costs for the walls, stove and windows and he had to fix a stove burner to the sum of \$70.00. The landlord has provided a receipt for the carpet cleaning costs. The landlords' agent states these sums were deducted from the tenants' security deposit and the remainder was returned to him on June 15, 2010.



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## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness. *The Residential Tenancy Act (Act)* s. 38 says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant

I find the receipt the landlord has provided in evidence for cleaning and carpet cleaning dated June 01, 2010 shows the tenants forwarding address. Therefore I find I prefer the evidence of the tenant that he did give the landlord his forwarding address in writing on May 30, 2010 and the landlord misplaced it and it was given again on June 04, 2010. As a result, the landlord had until June 15, 2010 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did return \$229.25 of the tenants' security deposit and the cheque is dated for the June 15, 2010; however both Parties agree that this was posted to the tenant and items posted are not considered to be received until five days after posting. Therefore, I find the landlord did not return this portion of the security deposit within 15 days as allowed under the *Act*.

The tenant did agree at the end of the tenancy that the landlord could retain \$80.00 from his security deposit for carpet cleaning therefore I will deduct this amount from the deposit and find the landlord must pay double the remainder of the deposit to the tenant pursuant to section 38(6) (b) of the *Act*.

As the tenant has been partially successful with his claim I find he is entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*. The tenant is entitled to a Monetary Order as follows:



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Security deposit	400.00
Subtotal	\$320.00
Double the remaining security deposit	\$640.00
Less amount returned to the tenant	(-\$229.25)
Filing fee	\$50.00
<b>Total amount due to the tenant</b>	<b>\$460.75</b>

## Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$460.75**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 20, 2010.

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Dispute Resolution Officer