



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes:**

MNSD      FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the portion of the security deposit that the tenant felt was wrongfully retained by the landlord. Both parties appeared and gave testimony.

### **Issue(s) to be Decided**

The tenant was seeking to receive a monetary order for the return of the security deposit paid at the start of the tenancy on August 15, 2009. The issue to be determined based on the testimony and the evidence is whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act.

The burden of proof was on the applicant to prove that the deposit was paid and the burden of proof was on the respondent landlord to prove that the deposit was returned or that the landlord had a right under the Act or by Order to keep it.

### **Background and Evidence**

The tenancy began on October 1, 2009 and rent was \$1,165.00. A security deposit of \$582.50 was paid. The tenancy ended on September 30, 2010 and at that time the tenant provided a written forwarding address. The tenant testified that the landlord repaid a portion of the security deposit back to the tenant but withheld \$207.50. The tenant stated that he did not agree with the deductions with the exception of \$85.00 for the carpet cleaning. The tenant is claiming a refund for the remainder of \$122.50.

The Move-Out Statement indicated that the tenant had \$602.50 deposit credits from which was deducted the following charges:

- \$85.00 for carpet cleaning,
- \$65.00 to clean the drapes,
- \$50.00 for additional cleaning and
- \$7.50 for light bulbs and disbursements in the amount of \$400.00 of the deposit in cash back to the tenant.

The landlord acknowledged that no application for dispute resolution was made seeking to retain these amounts from the tenant's security deposit. The landlord testified that the parties participated in a move-out inspection after which the tenant had signed in agreement with the listed costs on the document. A copy of the move-out inspection report had been submitted into evidence by the landlord. However, the tenant stated that he did not receive a copy of this evidence and therefore only verbal testimony from the landlord on this subject was accepted. The landlord's position was that by signing the move-out inspection report that featured the costs, the tenant was agreeing to the deductions.

### **Analysis**

In regards to the return of the security and pet damage deposits, I find section 38 of the Act is clear. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the written forwarding, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit. In this instance, the landlord repaid a portion of the deposit within the 15 days.

The Act states that the landlord can only retain a deposit without obtaining an order if the tenant agrees in writing that the landlord can keep it to satisfy a liability at the end of the tenancy. I find that, despite the fact that the tenant may have signed in agreement with the move-out condition inspection report, this did not constitute the required written permission under the Act that would allow the landlord to deduct \$207.50 from the \$582.50 security deposit and \$20 remote deposit. I find that although the tenant did verbally agree to pay the \$85.00 for the carpet cleaning, this was not considered permission to keep this amount under the Act. However, the tenant is still willing to pay the bill for carpet cleaning.

I find that because the tenant did not give the landlord written permission to keep any part of the deposit, nor did the landlord make an application for an order to keep the deposit, the landlord was in violation of the Act.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord must pay the tenant double the amount of the security deposit and pet damage deposit.

I find that the landlord's failure to pay back the entire amount of the deposit would entitle the tenant to be paid double the portion of the deposit withheld amounting to \$415.00, minus \$85.00 the tenant agreed could be retained for carpet cleaning.

Accordingly I find that the tenant is entitled to monetary compensation in the amount of \$380.00, comprised on \$330.00 for the remaining portion of double the security deposit and the \$50.00 cost of this application.

**Conclusion**

I hereby issue a monetary order to the tenant in the amount of \$380.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.