



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for the return of the security and key deposit – Section 38
2. An Order to recover the filing fee for this application - Section 72.

I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant eligible for a return of any or double the security deposit?

### Background and Evidence

The Tenancy began on October 20, 2010. Rent in the amount of \$1,350.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$675.00 and a key deposit in the amount of \$50.00. At the end of October 2010, the Tenant gave the Landlord notice to end the tenancy as of November 30, 2010. The Tenant did not pay the rent for November 2010 and moved out of the unit on November 2, 2010.

The Tenant states that she did not pay the rent for November because she had to move out of the unit earlier than intended as she had been frightened by the Landlord's agent reaction to her notice to end tenancy and by the agent's behaviour on November 1, 2010 when the agent attended at the unit to collect rent. The Tenant called the police in relation to the incident that occurred on November 1, 2010 and the Landlord provided evidence confirming that the police were called, that the police advised the agent not to approach the Tenant at the unit, and that the Tenant was moving the next day. There is no evidence of charges in relation to this incident.

The Tenant states that the incident involved the agent banging on her door in the late evening and loudly demanding rent. The agent denies banging on the door and states that he did nothing to frighten the Tenant but was simply carrying out his duties to collect rent. The agent confirmed that he did ask for rent as he was knocking at the door. The Tenant states that because of the incident, she was afraid for her safety and had to move out of the unit earlier than intended. The Tenant states that she paid a full month's rent at her new rental residence for November 2010 and incurred extra costs for the move due to the sudden change in plans. The Tenant did not supply evidence of these costs. The Landlord rented the unit to a new tenant for November 16, 2011 and retained the Tenant's security deposit against rent owing for November.

The Tenant states that she had only one key for the unit and left it on the counter when she moved out. The Landlord states that the Tenant had 2 keys for the unit and only left one key.

The Tenant provided her forwarding address to the Landlord on January 10, 2011 and requested the return of her security deposit of \$675.00 and her key deposit of \$50.00.

### Analysis

Section 26 of the Act provides that a tenant must pay rent when it is due, unless the Act confers such a right. Section 38(3) provides that a landlord may retain an amount from the security deposit that at the end of the tenancy remains unpaid. Section 7 of the Act provides that where a landlord claims compensation for loss from the other party's non-compliance with the Act, the Landlord must act reasonably to minimize such loss.

The Tenant argues that she did not have to pay the rent for November because of an incident where she was frightened by the Landlord's agent. Considering the evidence of the Tenant and the agent in relation to this incident however, I find that the Tenant has not substantiated a reasonable right allowing the Tenant to withhold the rent that was due and payable for November 2010. I find that the Landlord therefore had a right

to the November 2010 rent and that such rent remained unpaid. Both the Act and the lease agreement provide that a Landlord may set off a security deposit against the amount that remains unpaid. As the Landlord was able to mitigate the loss of the full month's rent by finding a new tenant for November 16, 2010, I find that the Landlord has established a right to  $\frac{1}{2}$  of the month's rent as lost rental income, or \$675.00. I therefore find that the Landlord has the right to retain the Tenant's security deposit of \$675.00 against the lost rental income of \$675.00 and I dismiss the Tenant's claim for return of the security deposit.

In relation to the key deposit, I prefer the evidence of the Tenant and find that the Tenant is eligible for a return of the key deposit. Accordingly, I find that the Tenant has established a monetary claim in the amount of \$50.00. I also find the Tenant is entitled to recovery of the filing fee for a total entitlement of \$100.00.

### Conclusion

I grant the Tenant a Monetary Order in the amount of \$100.00. If necessary, this Order may be filed in the Small Claims Court and enforced 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: April 29, 2011.

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Residential Tenancy Branch