



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, 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. An Order for return of the security deposit - Section 38;
2. A Monetary Order for compensation – Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

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 entitled to the monetary amounts claimed?

### Background and Evidence

The following are undisputed facts: The tenancy began on March 1, 2012 and ended March 8, 2012. Rent of \$420.00 was payable monthly. At the onset of the tenancy the Landlord collected \$200.00 as a security deposit. The tenancy ended as a result of the Landlord being ordered by the City to cease renting the unit. The Tenant provided her forwarding address in writing on March 8, 2012.

The Tenant states that the Landlord offered to refund the Tenant’s security deposit on March 29, 2012, two days after the Tenant made the application and more than 15 days after the end of the tenancy. The Tenant claims compensation in the amount of \$420.00 and double the security deposit.

The Landlord states that prior to the Tenant moving into the unit on February 29, 2012, a city inspector informed the Landlord that the unit to be rented to the Tenant could not be rented. The Landlord states that a written letter and order was then received by the Landlord on March 6, 2012 instructing the Landlord to stop renting the unit. The Landlord states that the Tenant was asked for the receipts that had been provided to her and refused the Landlord's offer of a return of a portion of the rent and the security deposit. The Landlord argues that the Tenant owes rent to the Landlord for the 8 days in the unit and that the Landlord is not responsible for the tenancy ending as it was due to the City action in ordering the Landlord to cease renting the unit.

### Analysis

Section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect whether or not the tenant occupies the unit. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party.

Accepting the undisputed evidence that the tenancy ended due to an order that the Landlord cease renting the unit, and that the Landlord knew this prior to accepting the rent from the Tenant, I find on a balance of probabilities that, the Landlord by an act or negligence breached the tenancy agreement by failing to provide the unit to the Tenant for the majority of the month.

Considering the affect of having to move-out of a unit merely a week into the tenancy, I find that it would be reasonable to compensate the Tenant for the loss of the rental unit and I find that the Tenant is entitled to compensation in the amount of **\$420.00**.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord failed to make an application for dispute resolution claiming against the security deposit, and failed to return the security deposit within 15 days of receipt of the Tenant's forwarding address, I find that the Landlord is required to pay the Tenants double the security deposit in the amount of **\$400.00**.

As the Tenant has been successful with its claim, I find that the Tenant is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$870.00**.

#### Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$870.00**. 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: May 28, 2012.

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Residential Tenancy Branch