



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the two tenants and the landlord's agent.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began on June 1, 2011 as a 1 year fixed term tenancy for the monthly rent of \$1,920.00 due on the 1<sup>st</sup> of each month with a security deposit of \$960.00 paid. The parties also agree the tenancy ended on May 31, 2012.

The parties agree that a move out condition inspection was completed on May 31, 2012 and that the tenant acknowledges that he had signed the Condition Inspection Report, in particular at the bottom of the document in the section entitled Security/Pet Damage Deposit Statement.

The parties agree the tenants were sent a cheque on June 13, 2012 in the amount of \$535.00 representing the security deposit of \$960.00 less a holdback of \$425.00. The parties also agree that on July 6, 2012 the landlord provided another cheque to the tenants in the amount of \$156.12 representing the \$450.00 held less the \$268.88 for the water bill.

The tenant asserts that the "estimated unbilled water" amount of \$425.00 was not originally listed in the section entitled Security/Pet Damage Deposit Statement. While the tenants stated they cannot prove it, they submit that if the male tenant had been aware that he was authorizing the landlord to withhold an amount based on an estimate he would never have agreed to it.

The form itself has two locations where the tenant signed. The first part signed acknowledges the agreement with the report representing the condition of the rental unit and the second is the Security/Pet Damage Deposit Statement. Directly above the tenant's signature in the second section is the following statement:

"I agree with the amounts noted above and authorize deduction of any Balance Due Landlord from my Security Deposit and/or Pet Damage Deposit. I further agree to pay the landlord the amount by which the Balance Due Landlord exceeds the amount of my deposit(s)."

The landlord's agent stated that the Condition Inspection Report is prepared in advance and the amount of the estimate was determined by headquarter staff and put into the document prior to the move out inspection. The landlord's agent further explained that no totals were put in at headquarters as the ultimate amount may include other charges at the move out inspection.

The landlord testified that the form used for the condition inspections at both move in and move out are completed in triplicate: one copy is provided to the tenant at the move in inspection and one at the move out inspection and the original is kept by the landlord. The tenant states he did not receive a copy of the report after the move out inspection.

### Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit less any mutually agreed upon deductions or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I find nothing in the *Act* disallows a landlord, if agreed to in writing by the tenants, from holding a portion of the security deposit that is an estimate for a balance owing on a bill that has not yet been received.

While the male tenant submits that he cannot remember the estimated unbilled water of \$450.00 being noted on the move out inspection, the entire section and the signature falls directly below the declaration agreeing to have the landlord deduct monies from the deposit.

Based on the balance of probabilities and in the absence of sufficient corroborating evidence from the tenants, I find it is unlikely that a party to a contract would sign a section of that contract agreeing to a deduction if no deduction was identified in the relevant component of the contract or agreement. I therefore find the tenants have failed to provide sufficient evidence to support their claim. As such, I find the landlord have fulfilled their obligations under Section 38 of the *Act*.

I also acknowledge that the landlord has subsequently provided the tenant with the amount of the difference between their estimate and the actual water utility bill despite no statements in the Condition Inspection Report indicating they will return the balance should the actual amount owed be less than the estimate that the tenant had agreed to allow the landlord to deduct.

Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety.

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: September 10, 2012.

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Residential Tenancy Branch