



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNDC, MNR, MNSD

### Introduction

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together.

The landlord's application is a request for a monetary order for \$3000.00 and a request for recovery of the \$50.00 filing fee. The landlord is also requesting an order to keep the full security deposit towards the claim.

The tenant's application is a request for a monetary order for \$1282.92 and a request for recovery of the \$50.00 filing fee.

### Landlord's application

### Background and Evidence

This tenancy began on February 25, 2012, and the tenant vacated on August 4, 2012.

There was no move in inspection report produced at the beginning of the tenancy nor was there a move out inspection report produced at the end of the tenancy.

The tenant paid a deposit at the beginning of the tenancy of \$562.50 paid on February 24, 2012.

A forwarding address in writing was received by the landlord on August 5, 2012.

The landlord testified that:

- She is requesting an order for \$3000.00 to cover the following:
  - The tenant removed carpeting and underlay from the rental unit and put in storage and it will have to be reinstalled.
  - Some carpeting will have to be cleaned because the tenant brought a pet into the rental unit without permission.
  - The living room, dining room, and hallway will have to be repainted because the tenant changed the paint color.
  - The tenant also put up a dog enclosure fence in the yard which will have to be removed.
  - The tenant did not move out of the rental unit until August 4, 2012, however she did not pay any rent for those four days.
  - She did collect rent for the full month of August 2012 from her new tenant, (this tenant's former boyfriend); however he has not paid the security deposit.
  - The tenant also has an outstanding utility bill from B.C. Hydro.
  - She has not had any estimates done for the work required but she believes \$3000.00 is what it will cost her.

### Analysis

It is my decision that I will be dismissing the landlord's full claim, because the landlord has provided no evidence whatsoever in support of this claim.

The landlord is claiming that there is \$3000.00 worth of work needed to the rental unit, however she has provided no proof of what work needs to be done, nor has she provided any estimates or invoices for the work she claims needs to be done.

The landlord when questioned was not even able to give me a breakdown of how she arrived at \$3000.00.

The landlord is claiming four days rent, however the landlord has admitted that she collected the full rent for the month of August 2012 from the new tenant and therefore it is my finding that she has no loss of rent for that month.

The landlord is also claiming outstanding utilities, however she has not provided a copy of the utility bill to the respondent, plus the copy she supplied to the Residential Tenancy Branch does not indicate for what period of time the bill covers.

I am not willing to issue an order to the landlord for an amount that she is unable to justify in any way whatsoever.

### Tenant's application

#### Background and Evidence

As stated above, this tenancy began on February 25, 2012, and the tenant vacated on August 4, 2012.

There was no move in inspection report produced at the beginning of the tenancy nor was there a move out inspection report produced at the end of the tenancy.

The tenant paid a deposit at the beginning of the tenancy of \$562.50 paid on February 24, 2012.

A forwarding address in writing was received by the landlord on August 5, 2012.

The tenant testified that:

- The landlord has refused to return any of her security deposit and did not have the right to claim against the security deposit for damages, because the landlord did not do a move in inspection report or a move-out inspection report.
- She is also asking for moving costs, because when she was away from the unit after having fought with her boyfriend, the landlord agreed to rent the unit to her boyfriend after her boyfriend told the landlord that she had moved out, when in fact she had not.
- Although she knew she had the right to move back into the rental unit she decided not to do so to avoid further conflict, however she believes the landlord should pay her moving costs because the landlord did not have the right to rent the unit to her former boyfriend without first checking with her to see if she had vacated.
- She is willing to pay utilities that she believes are owed to the landlord in the amount of \$102.08. She estimated this amount based on a previous bill.

The tenant is therefore requesting an order as follows:

Return of security deposit doubled	\$1125.00
Moving costs	\$260.00
Filing fee	\$50.00
Subtotal	\$1435.00
Less estimated utilities	- \$102.08
Total	\$1332.92

### Analysis

It is my finding that the tenant has established a claim for return of double the security deposit, because the landlord failed to do the required to move in inspection report and move out inspection report, and therefore has extinguished her right to claim against the security deposit for damages.

Therefore although the landlord did file a claim against the security deposit within the 15 day time limit, she did not have the right to do so and should have been returning the full security deposit.

I have allowed double the security deposit even though a small portion of the landlords claim was for four days rent, and for utilities as the landlord was aware at the time that she applied that she had already collected the full amount of rent for that time frame from the new tenant, and there is no evidence to support the claim for utilities. The landlord admitted that she did not even serve the tenant with a copy of the utility bill she claims is outstanding.

The Residential Tenancy Act states that, if the landlord does not either return the security deposit, get written permission from the tenants to keep the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit and did not have the right to apply for dispute resolution to keep the tenant's security deposit. The tenant has not given the landlord any written permission to keep the security deposit.

This tenancy ended on August 4, 2012 and the landlord had a forwarding address in writing by August 50,012 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security deposit to the tenant.

I deny the tenants claim for moving costs however, because the tenant was aware that she did not have to move out of the rental unit but chose to do so to avoid conflict. If the tenant moves when she was aware she did not have to, she cannot claim moving costs for that move.

I will order that the landlord to bear the cost of the filing fee paid by the tenant however because the tenant has established a substantial claim against the landlord.

Therefore the total amount of the tenant's claim that I have allowed is as follows:

Double security deposit	\$1125.00
Filing fee	\$50.00
Subtotal	\$1175.00
Less agreed utilities deduction	\$102.08
Total	\$1072.92

### Conclusion

#### Landlord's application

The landlord's application is dismissed in full without leave to reapply.

#### Tenant's application

I have issued an order for the landlord to pay \$1072.92 to the tenant.

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 23, 2012.

---

Residential Tenancy Branch