



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing dealt with an application by the tenant seeking the return of double their security deposit. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issues to be Decided

Is the tenant entitled to the return of double their security deposit?

### Background and Evidence

The tenancy began on or about May 1, 2012. Rent in the amount of \$700.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$350.00.

The tenant gave the following testimony; gave the landlord verbal notice that she was moving out at the end of August 2012, called the landlord and told him that she wanted her deposit and verbally gave her forwarding address over the phone, the landlord refused to return the deposit as he had advised the tenant that she had damaged the suite and that if she came and fixed everything and “said sorry” she would get her deposit, the tenant stated that “I am a woman and do not know how to fix things but if he would have given me a list and the price I would have paid him”, filed for dispute resolution and seeks the return of double her deposit.

The landlord gave the following testimony; the tenant did not give proper notice to him; it was not in writing and it was not a full months’ notice, never received her forwarding address in writing, the tenant left the suite dirty and with some minor damage, says he

spent “around \$500.00 to fix everything”, does not feel that he should have to return the deposit.

### Analysis

At the outset of the hearing both parties advised that they had significant difficulties with the English language and that neither had ever been involved in a dispute resolution hearing. A significant amount of time was spent explaining the process and the importance of documentation to support testimony. Neither party provided any supporting documentation. Both parties agreed that their tenancy had been based on a verbal agreement and that issues were always dealt with verbally.

As explained to the parties at the outset of the hearing the onus or burden of proof is on the party making the claim, in this case the tenant. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

As the tenant is the sole applicant I will deal with her claim and my findings as follows;

The tenant is seeking the return of double the security deposit. Section 23 of the Act clearly outlines the landlords’ responsibility and Section 24 of the Act details the consequences to the landlord if he does not comply with Section 23.

### **Condition inspection: start of tenancy or new pet**

- 23** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
- (b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (3), and
- (b) the tenant does not participate on either occasion.

## 24

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The landlord acknowledged that he did not conduct a move in condition inspection or move out condition inspection. He indicated that he was not aware that he was obligated to conduct an inspection and stated because of his limited English "I wasn't sure what to do".

I am satisfied that the tenant is entitled to the return of the security deposit, but as for the tenant seeking the return of double the security deposit; the landlord adamantly disputes that the tenant ever provided her forwarding address in writing at any time and that the only time he became aware of it was when he was notified of this hearing. He thought it would be best to present his position at the hearing before returning the deposit. In addition he thought that because the tenant damaged the suite he would be able to make his argument about that during today's hearing. When I explained to the landlord that he is not able to retain the deposit without an order from the Branch, he said he was sorry and was thankful for the information. The landlord made several references to outstanding rent and cost of repairs that he incurred as a result of the tenant. I explained to him that he is at liberty to make a separate application and have a hearing in regards to any issues that he wishes to address at another time. I further explained that today's hearing will deal only with the application before me regarding the matter of the security deposit. He indicated he understood and that he will make inquiries into a separate hearing.

The tenant acknowledged that she did not provide her forwarding address in writing and that she only advised the landlord of it by phone the day prior to her filing for dispute resolution.

Based on the above and the landlord not conducting the condition inspection report upon move in nor move out; I am satisfied that the tenant is entitled to the return of the \$350.00 security deposit. The landlord must return the security deposit.

As for the monetary order, I find that the tenant has established a claim for \$350.00 I grant the tenant an order under section 67 for the balance due of \$350.00. This order

may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$350.00.

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: December 13, 2012.

---

Residential Tenancy Branch