



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD

### 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 tenant, his advocate and the landlord.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for money owed and for all or part of the security deposit, pursuant to Sections 38, 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began in March 2011 as a month to month tenancy for the monthly rent of \$525.00 due on the 1<sup>st</sup> of each month with a security deposit of \$262.50 paid.

The tenant submits that he provided his forwarding address in a letter dated October 19, 2012. The landlord testified that he did not return the deposit to the tenant or file an Application for Dispute Resolution seeking to claim against the deposit. The landlord submits that he kept the deposit because the tenant had damaged the rental unit and left garbage to be cleaned up.

The tenant acknowledges that he did not vacate the rental unit until October 10, 2012 despite knowing that the tenancy had ended on September 30, 2012. He submits that the landlord never did provide him with compensation for receiving a 2 Month Notice to End the Tenancy for Landlord's Use of Property.

While the rental amount during the tenancy was \$525.00 the tenant seeks only 2/3 of that amount for a total of \$358.33 as compensation for receiving the 2 Month Notice.

The landlord testified that his cousin gave the tenant \$525.00 cash. The tenant disputes this claim.

### 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 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.

As the landlord had received the tenant's forwarding address on October 19, 2012, I find the latest the landlord should have either returned the deposit, in full, or filed an Application for Dispute Resolution seeking to claim against the deposit was November 4, 2012.

From the landlord's testimony that he did neither, I find the landlord has failed to comply with Section 38(1) of the *Act* and the tenant is entitled to double the amount of the security deposit in accordance with Section 38(6).

Section 51 of the *Act* states a tenant who receives a notice to end tenancy under Section 49 (landlord's use of property) is entitled to receive from the landlord compensation equivalent to one's month rent payable under the tenancy agreement.

As the tenant disputes that he received any payment from the landlord or his cousin and in the absence of the cousin to provide any evidence or testimony that he in fact gave the tenant any money I find the landlord has failed to establish that he provided any compensation to the tenant in accordance with Section 51.

I also accept that by reducing the compensation by the equivalent of what would be the per diem rate of overholding as submitted by the tenant is fair to both parties in light of the tenant overholding the rental unit until October 10, 2013.

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$908.33** comprised of \$550.00 double security deposit and \$358.33 Section 51 compensation.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: February 18, 2013

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Residential Tenancy Branch