



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Chartwell Construction Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of all or part of the security deposit, and to recover the filing fee.

The tenant and an agent for the landlord (the “agent”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed receiving the evidence from the landlord and that she had the opportunity to review that evidence prior to the hearing. The agent stated that she received all evidence from the tenant except for a receipt for moving expenses, however was willing to proceed with the hearing as the identical amount was indicated on the monetary worksheet submitted with the tenant’s application for dispute resolution which the agent did have before her. The tenant was provided the opportunity to read the moving expense receipt into evidence orally during the hearing as an alternative.

### Preliminary and Procedural Matters

At the outset of the hearing, the tenant’s application was amended from “Other” to dispute code “MNDC” to reflect the tenant’s application for compensation for moving expenses which is a claim for a monetary order for money owed for damage or loss under the *Act*, regulation or tenancy agreement. The agent consented to the change to the application as she was fully aware of the claim of the tenant.

Issue to be Decided

- Is the tenant entitled to the return of all or a portion of her security deposit under the *Act*?
- Is the tenant entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A month to month tenancy began on August 1, 2012. Monthly rent in the amount of \$1,197.00 was due on the last day of each month. The tenant paid a security deposit of \$598.50 at the start of the tenancy. The tenancy ended on October 31, 2012 after the tenant provided the landlord with a 1 Month Notice under the *Act*.

The parties agreed that when the tenancy agreement was first signed, a liquidated damages amount of \$200.00 would apply if the tenant vacated the rental unit before five months from the occupancy date. The tenancy lasted three months.

The condition inspection report submitted in evidence by the parties and dated October 31, 2013, indicated that the tenant was given a credit of \$25.00 for providing “early notice” to the landlord that she would be vacating, but was being charged \$200.00 pursuant to the liquidated damages clause, and agreed in writing to the net balance of \$423.50 for the balance of her security deposit as follows:

Original security deposit	\$598.50
Credit for “early notice”	+ \$25.00
<b>Subtotal</b>	<b>\$623.50</b>
Deduction for liquidated damages	- \$200.00
<b>Total security deposit owing to tenant</b>	<b>\$423.50</b>

The tenant testified that she did receive \$423.50 from the landlord after the end of the tenancy. The tenant is now seeking the return of her entire security deposit after agreeing in writing to the net balance security deposit of \$423.50.

The tenant’s moving expenses claim of \$162.50 will be addressed later in this decision as the parties reached a settled agreement regarding the tenant’s moving expenses.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Tenant's claim for the return of her full security deposit** – The parties agreed during the hearing that when the tenancy agreement was signed, the tenant was aware that if she ended the month to month tenancy earlier than five months after occupancy, the tenant would be responsible for \$200.00 in liquidated damages. Furthermore, the tenant agreed in writing on October 31, 2013 to the returns of \$423.50 of her security deposit which the tenant testified was returned to her by the landlord.

The tenant did not provide any evidence that the landlord breached the *Act*, regulation or tenancy agreement. Based on the above, **I dismiss** the tenant's application for the return of the remaining portion of her security deposit as she had already agreed in writing to the balance owing of \$423.50 by agreeing to that amount on October 31, 2013 when she signed the move-out condition inspection report security deposit deductions and confirmed the landlord paid her the full amount of \$423.50. **I find** that the \$200.00 liquidated damages clause was clear and agreed to in writing by both parties when the tenancy agreement was entered into. The tenant ended the tenancy early by providing a 1 Month Notice to the landlord after residing in the rental unit for only three months.

### Settlement Agreement

During the hearing, the parties agreed to the following:

1. The landlord agrees to pay half of the tenant's moving expenses which were \$162.50 for a total monetary amount of **\$81.25** which the agent agrees will be paid on or before **April 30, 2013**.
2. The tenant is granted a monetary order pursuant to section 67 of the *Act* in the amount of **\$81.25**, which will be of no force or effect if the landlord pays the tenant in accordance with #1 above.
3. The tenant waives their filing fee as part of this settled agreement.
4. The parties agree that this settled agreement represents a full and final settlement of all remaining matters related to this tenancy.

This settlement agreement was reached in accordance with section 63 of the *Residential Tenancy Act*.

Conclusion

I dismiss the tenant's application for the return of the remaining balance of her security deposit.

Based on the settled agreement between the parties, I grant the tenant a monetary order in the amount of \$81.25 pursuant to section 67 of the *Act*, which will be of no force or effect if the landlord pays the tenant on or before April 30, 2013. If the landlord does not make the payment described above, the tenant must serve the landlord with the monetary order which may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I order the parties to comply with the terms of their settled agreement described above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 11, 2013

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Residential Tenancy Branch

