



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** MND, MNSD, FF

### **Introduction**

This hearing was convened upon application by the tenant seeking recovery of her security deposit and the filing fee paid for this application.

Both parties appeared at the hearing and gave evidence under oath.

### **Background Summary**

The evidence is that at the start of this tenancy in June 2010 the tenant paid a security deposit of \$375.00. This tenancy ended on January 26, 2013 and the tenant provided her forwarding address in a letter delivered to the landlord on January 26, 2013 which also contained the rental unit keys.

The tenant says that on February 23, 2013 she received a cheque for \$274.20 instead of the \$375.00 she was expected. The tenant testified that while the parties did a walk-through of the suite on January 26, 2013 no formal condition inspection report was prepared. The tenant says that at the walk-through she told the landlord she would get the carpets clean but he declined. The tenant says she did not authorize any deductions from her security deposit.

The landlord agrees that he only returned \$274.20 to the tenant. The landlord says he retained \$100.80 for carpet cleaning as allowed under the Tenancy Agreement between the parties. He referred to Clause 45 which states:

That after vacating the premises the carpets will be professionally steam cleaned and the drapes dry cleaned and the costs of this, plus costs of Tenant damages, if any, will be deducted from the Tenant's security deposit.

He agrees he did not obtain the tenant's permission after the tenancy ended to retain any sum from the deposit nor did he make an application seeking to make a claim against the deposit.

## Findings

Section 38(1) of the *Residential Tenancy Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, whichever is later, to either return the deposit or if a landlord feels he/she has cause to retain all or part of the deposit to file an Application for Dispute Resolution seeking an Order allowing the landlord to retain all or part of the deposit.

If the landlord fails to comply with Section 38(1), then the landlord may not make a claim against the deposit, and the landlord **must** pay the tenant double the amount of the deposit (Section 38(6)).

The evidence shows that the tenant paid a security deposit of \$375.00; that the landlord received the tenant's forwarding address on January 26, 2013 and the landlord returned only \$274.20 on February 23, 2013. Not only did the landlord fail to return the full deposit, he did not return the portion within 15 days of having received the tenant's forwarding address.

With respect to the landlord's argument that the Tenancy Agreement between the parties allowed him to retain a portion of the security deposit I refer to Section 20(e) of the Act which states:

**20** A landlord must not do any of the following:

(e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

I find that the landlord had no authority to retain any portion of the tenant's deposit and he did not comply with Section 38. He must therefore pay the tenant double the deposit. I note that the landlord has returned \$274.20 so this will be deducted from the overall award.

As the tenant has been successful in this claim I will also award her recovery of the \$50.00 filing fee she has paid for this application.

Calculation of monetary award in favour of tenant:

Deposit paid June 1, 2010	\$375.00
Interest on Deposit from date paid to date of this Order	0.00
Double Deposit pursuant to Section 38	375.00
Less payment made by landlord February 26, 2013	-274.20
Filing fee	50.00
Total amount payable by landlord to tenant	\$525.80

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. This is a final and binding Order enforceable as any Order of the Small Claims Division of the Provincial 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: May 15, 2013

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Residential Tenancy Branch

