



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, OLC, RPP, FF, O

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for return of the security deposit - Section 38;
2. A Monetary Order for compensation – Section 67;
3. An Order for the Landlord’s compliance – Section 62;
4. An Order for the return of the tenants personal property – Section 65; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to the Landlord’s compliance and the return of personal property?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy agreement signed by the Parties in July 2012 provides that the tenancy start date is August 1, 2012 for a fixed term ending July 31, 2013. The tenancy ended on January 12, 2013. Rent of \$1,835.00 was payable monthly and at the outset of the tenancy the Landlord collected \$900.00 as a security deposit. While the Parties looked at the unit together, no move-in or move-out inspection and report was completed.

The Tenant states that at move-in the unit was in extremely dirty condition despite the Landlord agreeing to provide the Tenants with a clean unit. The Tenant states that the unit was cleaned by themselves as the Landlord failed to clean the unit. The Tenant states that she did not ask the Landlord for compensation for cleaning the unit and completed the cleaning out of "good will". The Tenant states that the good will quickly eroded and claims \$4,000.00. The Tenant provided a detailed invoice setting out the cleaning and hours spent. The Landlord states that as the previous tenants had not moved out of the unit on time and left the unit unclean the Landlord provided the Tenant with a 1/3 rent reduction for the second month of the tenancy in compensation. The Parties agree that the Tenant was given the keys to the unit on August 4, 2013.

The Tenant states that rats were in the unit from the onset of the tenancy and that despite reporting this to the Landlord the Landlord failed to do anything other than call in an inspection company that confirmed the presence of a rat infestation. The Tenant states that as a result the Parties mutually agreed to end the tenancy early. The Tenant states that rent was paid to January 20, 2012 and that new tenants moved into the unit the same day as the Tenants moved out. The Tenant claims refund of the rent paid for the period January 12 to January 20, 2013 in the amount of \$490.00. The Landlord states that the agreement to end the tenancy early was only made on the condition that new tenants would be found and that the Landlord would not suffer any loss of rental income. The Landlord provided an unsigned copy of the agreement to end the tenancy. The Landlord states that the tenants who had been living in the basement unit and who were paying less rent than the upper unit moved into the upper unit and did not pay any extra rent for the first month in the upper unit. The Landlord states that he advertised the lower unit immediately but that this unit has still not been rented.

The Tenant states that the Landlord failed to return the security deposit and claim return of double in the amount of \$1,800.00. The Tenant states that the forwarding address was left in writing the day of the move-out. The Landlord states that the forwarding

address provided was the dispute address and no other address had been provided. The Landlord states that he does not consider the address provided by the Tenant to be valid. The Tenant states that the new tenants were friends of the Tenant and had agreed to forward any mail from the unit address to the Tenant. The Landlord confirms that no application for dispute resolution has been made.

The Tenants states that the Landlord was provided 12 post dated rent cheques at the onset of the tenancy but has refused to return these cheques. The Tenant states that as a result of the Landlord's failure the Tenant had to cancel all the post dated cheques at a cost of \$20.00. The Tenant claims reimbursement of this cost. The Landlord states that he did return the post-dated cheques to the Tenant.

#### Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Although the Tenant provided a questionable forwarding address, it is clear that the Tenant's address is contained in the application for dispute resolution. Had the Landlord been concerned about a valid address for service or delivery, the Landlord had such an address upon receipt of the application and yet still failed to make an application claiming against the deposit or to return the deposit. As such, I find that the Landlord is required to pay the Tenant double the security deposit in the amount of **\$1,800.00.**

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. As the mutual

agreement to end the tenancy was not signed, considering that no evidence was provided indicating that the Landlord agreed to refund rent to the Tenant should another tenant fill the unit before the end of January 2013, and given that the Tenant only paid a portion of January 2013 rent, I find on a balance of probabilities that the Tenant has not substantiated a refund of rent paid for January 2013 and I dismiss this claim. Although the Tenant does not agree that the reduction in rent at the beginning of the tenancy included an amount to compensate for the unclean unit, given that the rent reduction was greater than the days lost in moving in late, I find that the Tenant was compensated for the unclean unit and I dismiss this claim. Given the Tenant's evidence of bank charges, I find that the Tenant has substantiated that the Landlord did not return her post dated cheques and is therefore entitled to the **\$20.00** claimed. As the cheques have been cancelled, the request for the return of the post-dated cheques is no longer relevant and I dismiss this claim.

As the Tenant's application has met with success, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,920.00**.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,920.00**. If necessary, this order may be filed in the Small Claims Court and 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: July 8, 2013

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Residential Tenancy Branch