



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNSD, MND, MNDC

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

The tenant's application is a request for an order for the return of her security deposit and a request for an order for recovery of her filing fee.

The landlord's application is a request for an order to retain the full security deposit of \$750.00, and a request for a monetary order for \$1389.74.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

Has the landlord established a monetary claim against the tenant, and the right to retain the security deposit or has the tenant established the right to the return of her security deposit?

### Background and Evidence

This tenancy began on August 15, 2011, and the tenant vacated the rental unit on April 30, 2013.

At the beginning of the tenancy the tenant paid a security deposit of \$750.00.

At the end of the tenancy the tenant agreed to a deduction of \$100.00 from the security deposit, and on May 16, 2013 the landlord issued the tenant a cheque for \$650.00 for the return of the remainder of her security deposit.

The landlord subsequently put a stop payment on that \$650.00 cheque.

The landlord testified that:

- At the end of the tenancy he had originally told the tenant that he would return \$650.00 of her security deposit.
- The tenant had agreed to allow him to keep \$100.00 of the security deposit to replace some damaged blinds.
- He did give the tenant a cheque for \$650.00 on May 16, 2013, however he subsequently found damage in the rental unit and therefore put a stop payment on the cheque.
- He found that the countertops in the rental unit were damaged and needed to be replaced, and he also found that the tenant had left the yard in very poor condition and as a result he had to do 16 hours of yard work to get the yard back into proper condition.
- In the tenancy agreement the tenant was responsible for all yard work.

He is therefore requesting an order allowing him to keep the full security deposit, and requests a monetary order as follows:

Replace countertop	\$1680.00
16 hours of yard work @ \$25.00	\$400.00
Cost of printing photo evidence	\$9.74
Filing fee	\$50.00
Subtotal	\$2139.74
Less security deposit held	\$750.00
Total	\$1389.74

We attempted to contact the landlords witness; however she was not answering the phone number provided.

The tenant testified that:

- She is unaware of any damage to the countertops in the rental unit during her tenancy, and at the end of the tenancy the landlord made no mention of any of this damage.
- The landlord did not do a move out inspection, even though she requested one, however the landlord still had plenty of time to point out any deficiencies to her and made no mention of any deficiencies.
- Also when she vacated she left the yard in good condition, and it was not as it appears in the landlords photos.
- She did agree to allow the landlord to deduct \$100.00 from her security deposit for the cost of some broken blinds, however she did not agree to any further deductions.
- She therefore requests that the landlord's application be dismissed in full and that her security deposit be ordered returned.

### Analysis

It is my finding that the landlord has not met the burden of proving that the tenant caused any damage to the rental unit during the tenancy.

The landlord failed to do the move out inspection report that's required under the Residential Tenancy Act, and therefore there's no record of the condition of the rental unit when the tenant vacated.

Further, the landlord made no mention of any damage to the countertops until well after the tenancy ended, and therefore I have no way of knowing whether or not the damage occurred after the tenancy ended.

The landlord also failed to make any mention of the need for yard work when the tenant vacated, and although the landlord has sent photo evidence showing that the yard is quite overgrown, I have no way of knowing when that photo was taken.

It is my finding therefore that the landlord has not met the burden of proving any of his claim against the tenant.

As far as the security deposit is concerned, by failing to do a move out inspection report the landlord has extinguished his right to claim against the security deposit for damages, and therefore he was required to return the security deposit within 15 days of receiving a forwarding address in writing.

The Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The tenant claims to have left a forwarding address in writing in the landlord's mailbox on June 12, 2013 however the landlord denies receiving that forwarding address. The landlord did however receive a forwarding address from the tenant by registered mail when he received the application for dispute resolution in August of 2013, and therefore the 15 day time limit is well past.

Therefore even though the tenant has not applied for double the security deposit, I am required to order that the landlord must pay double the amount of the security deposit to the tenant.

The tenant paid a deposit of \$750.00, and therefore the landlord must pay \$1500.00, less the \$100.00 deduction that the tenant agreed to for replacing blinds, for a difference of \$1400.00.

I also allow the tenants claim for recovery of her \$50.00 filing fee.

### Conclusion

The landlord's application is dismissed in full without leave to reapply.

I've issued an Order for the landlord to pay \$1450.00 to the tenant.

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: November 12, 2013

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Residential Tenancy Branch

