



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding  
**DECISION**

Dispute Codes      MNSD, MNDC, FF

## Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. Although served with the Application for Dispute Resolution, Amended Application for Dispute Resolution and Notice of Hearing by registered mail, the tenant did not appear.

## Issue(s) to be Decided

- Is the landlord entitled to a monetary order and, if so, in what amount?
- What disposition should be made of the security deposit?

## Background and Evidence

This one year fixed term tenancy commenced November 1, 2012 and ended by mutual agreement on August 15, 2013. The monthly rent of \$550.00 was due on the first day of the month. The tenant paid a security deposit of \$275.00.

A move-in inspection was conducted and move-in condition inspection report was completed on October 26, 2012.

Although the parties had agreed that the tenancy would end on August 15 and the tenant had paid rent to that date, because of his personal circumstances the tenant was not able to vacate the rental unit until August 21.

A move-out inspection was conducted and a move-out condition inspection report was completed on August 21. The tenant signed the report and agreed to the following deductions from the security deposit:

- Strata fines - \$200.00
- Overholding rent - \$88.70

- Carpet Cleaning - \$120.00
- General Cleaning - \$200.00

The tenant also gave the landlord his forwarding address in writing at this time.

The landlord did not file this application for dispute resolution until September 24. The landlord explained that it took a while to get the invoices together.

In the hearing the landlord reduced its' claim. It withdrew the claim for carpet cleaning as the carpets were ultimately replaced and it advised that the actual cost of cleaning was only \$100.00.

### Analysis

Based on the evidence before me I find that the landlord has established a total monetary claim of \$438.70 comprised of strata fines in the amount of \$200.00; overholding rent in the amount of \$88.70; general cleaning in the amount of \$100.00; and the \$50.00 fee paid by the landlord to file this application.

Normally a landlord who files their application for dispute resolution claiming against the security deposit more than fifteen days after the later of the date on which the tenancy ended or the date on which the tenant provided his forwarding address in writing is subject to the penalty imposed by section 38(6) of the Residential Tenancy Act – payment of double the security deposit to the tenant.

However, in this case, the tenant had agreed in writing that the landlord could retain the security deposit to pay a liability or obligation of the tenant. Accordingly, pursuant to section 38(4) the landlord was not obliged to obtain an order from an arbitrator to be able to retain the security deposit in partial satisfaction of the liability admitted by the tenant so it is not subject to the section 38(6) of the penalty. The landlord does need an arbitrator's order for the difference in order to obtain a monetary order that may be enforced in Provincial Court, hence this application for dispute resolution.

I confirm that the landlord may retain the security deposit of \$275.00 in partial satisfaction of its' claim and I grant the landlord a monetary order pursuant to section 67 for the balance of \$163.71.

Conclusion

A monetary order has been made in favour of the landlord. If necessary, it 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: January 08, 2014

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Residential Tenancy Branch

