



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD

### 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. A Monetary Order for compensation – Section 67; and
2. An Order for the return of the security deposit - Section 38.

The Landlord and Tenant 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?

### Background and Evidence

The tenancy started on March 1, 2013 and ended on July 8, 2013. Rent of \$750.00 was payable monthly and at the outset of the tenancy the Landlord collected \$375.00 as a security deposit. The Tenant provided her forwarding address on July 8, 2013 and agreed to a deduction for utilities. On September 9, 2013 the Landlord returned \$133.66 to the Tenant.

The Tenant states that no move-in inspection was conducted and no offer to inspect the unit was given. The Tenant states that the Landlord told her that if she took the unit it was taken “as is”. The Landlord states that a walkthrough was done and that an inspection form was filled out and left with the Tenant who did not return the form. The

Landlord provided a copy of a move-in condition report and it is noted not to have been signed by the Tenant.

The Tenant states that a move-out inspection was conducted on July 8, 2013 and that no form was completed or signed by the Tenant and no copy was received. The Landlord states that the form was filled out by the Landlord alone and left with the Tenant who did not return the form. The Landlord states that as the Landlord was experiencing a death in the family at the time the form did not get completed by the Landlord until August 2013.

The Parties agree that the utilities that were owed amounted to \$161.34. The Tenant states that she should have been returned \$213.66 and that the Landlord took too long to return this amount. The Tenant claims return of the security deposit.

The Tenant states that on May 15, 2013 the Tenant told the Landlord about the presence of bedbugs in the unit but that the Landlord only instructed the Tenant to raise her furniture, bag her clothing and to use spray and powder provided to the Tenant. The Tenant states that the Landlord did not call a pesticide company or do anything to remove the bedbugs so the Tenant gave a month's notice and moved out of the unit. The Tenant states that all of her furniture was taken to the dump and the Tenant claims \$1,355.00 for its replacement. The Tenant provides an itemized amount for each furniture item claimed based on the replacement value or where the items were newly purchased, the original costs. No receipts or invoices were provided and the Tenant states that the replacement amounts came from similar items found on sale on an internet website. The Tenant also claims \$104.00 for dump fees and gas. No receipts were provided for these costs claimed. The Tenant claims \$144.00 for work missed during her move out of the unit.

The Landlord agrees that bed bugs were present and states that they are currently under a contract with a pesticide company. The Landlord states that the Tenant was provided the protocols to follow for treating the unit but that the Tenant refused the

Landlord entry into the unit in order to treat the bugs. The Tenant states that at no time was the Landlord denied entry for bug treatment.

The Landlord states that he witnessed the Tenant move the furniture items described at the hearing into the Tenants current residence as he was by chance having coffee across the street at the time. The Landlord states that in particular he saw the queen size mattress strapped on the Tenant's car. The Tenant states that the Landlord could not have seen the mattress as they actually burned the mattress.

### 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. Based on the undisputed evidence that the security deposit was not returned to the Tenant within the 15 days of the receipt of the forwarding address, I find that the Landlord must pay the Tenant **\$750.00**, representing double the security deposit plus zero interest. Given the Parties agreement that the utilities owed amounts to \$161.34 and that \$133.66 was already returned, I deduct this total amount of **\$295.00** from \$750.00 leaving a final entitlement of **\$455.00** to the Tenant.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. 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. While it may be that the Landlord acted negligently in relation to the treatment of the unit, given the Tenant's contradictory evidence in relation to the disposal of a queen

size mattress, I find that the Tenant's evidence about the loss of additional furniture items to be suspect. As such and considering the Landlord's evidence of seeing the described items being moved into another unit, I find that the Tenant has not proven on a balance of probabilities that the items claimed were discarded or damaged resulting in a loss to the Tenant. I therefore dismiss the Tenant's claim for compensation.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$455.00**. 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: May 22, 2014

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Residential Tenancy Branch

