



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This is an application by the tenant for a monetary order for money owed or compensation under the Act, for the return of double the security deposit, and to recover the cost of the filing fee from the landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Preliminary matter

It is important to note that the tenant provided an amended monetary claim within their documentary evidence. The tenant did not amend their Application in accordance with the provisions of Rule 2.5, of the Residential Tenancy Branch Rules of Procedures. Therefore, in this Decision I have considered the tenant's monetary claim as it was filed in their Application on March 27, 2014.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the tenant entitled to a monetary order for money owed or compensation?  
Is the tenant entitled to a monetary order for return of double the security deposit?

### Background and Evidence

The tenancy began on October 27, 2012. Rent in the amount of \$900.00 was payable on the 27th of each month. A security deposit of \$450.00 was paid by the tenant. The tenancy ended on July 1, 2014.

The tenant claims as follows:

a.	Cleaning costs	\$ 102.38
b.	Registered mail	\$ 11.09
c.	Moving expenses	\$ 700.00
d.	Double the security deposit \$450	\$ 900.00
g.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$1,763.47</b>

### Cleaning costs

At the outset of the hearing the tenant withdrew his claim for cleaning costs.

### Registered mail

The tenant seeks compensation for sending his hearing documents by registered mail.

### Moving expenses

The tenant testified that the landlord wanted to increase his rent and because he was not agreeing to the increase he was forced to move. The tenant stated he did not receive any written notice to end tenancy.

The landlord testified that they never asked the tenant to leave the rental unit and that the tenant vacated the rental unit on their own accord. The landlord stated that the tenant gave notice in May to end the tenancy June 27, 2014. The landlord stated the tenant stay for an additional 5 days and agreed in writing that the landlord could retain \$150.00 from the security deposit for rent.

### Double the security deposit

The parties agreed that the landlord received the tenant's forwarding address in writing on July 1, 2013, when the tenant vacated the rental unit.

The parties agreed that the tenant authorized the landlord to retain \$150.00 from the security deposit and the balance of the security was \$300.00.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the tenant has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### Cleaning costs

This portion of the tenant's claim was withdrawn.

### Registered mail

In this case, the tenant is seeking to recover the cost of the registered mail package that he was required to serve under the Act. I find there is no provision under the Act that allow the recovery of the service fee. Therefore, I dismiss this portion of the tenant's claim.

### Moving expenses

The evidence of the tenant was that he was forced to move from the rental unit. This was denied by the landlord. The evidence of the landlord was that the tenant gave notice to end the tenancy, however stayed an addition 5 days after the effective vacancy date.

Under section 44(1) of the Act, the landlord can end the tenancy in accordance with the Act, by proving notice to end tenancy that complies with the Act. Section 52 of the Act, states in order to be effective, a notice to end tenancy must be in writing and must when given by the landlord, be in the approved form.

I accept the evidence of the landlord over the tenant because if the tenant was forced to move as suggested, it would not be reasonable for the tenant to agree to pay rent for an addition 5 days. Further, there was no requirement for the tenant to vacate the rental unit as the tenant was not served in writing with a notice to end the tenancy.

I find the tenant has failed to prove a violation of the Act, by the landlord. Therefore, I dismiss this portion of the tenant's claim.

### Double the security deposit

Under section 38 of the Act, within 15 days of the tenancy ending or the date the landlord receives the tenant's forwarding address, whichever is the later, the landlord must do one of the following; repay the security deposit to the tenant, or make an application for dispute resolution claiming against the security deposit.

In this case, the parties agreed that the landlord received the tenant's forwarding address on July 1, 2014, when the tenant vacated the rental unit.

The landlord did not applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as in this case the tenant authorized the landlord to keep the amount of \$150.00. The landlord did not have the authority to retain the balance due of \$300.00.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act that the landlord pays the tenant the sum of **\$600.00**, comprised of double the security deposit on the amount the landlord was not authorized to keep (\$300.00).

As the tenant was successful with their application, I find the tenant is entitled to recover the cost of the file fee from the landlord.

I find that the tenant has established a total monetary claim of **\$650.00** comprised of the above described amount and the \$50.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

#### Conclusion

The tenant is given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial 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 28, 2014

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Residential Tenancy Branch

