



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order and an order to have the remainder of her deposit returned. This matter was adjourned from the original hearing date to allow the parties an opportunity to review each other's evidence. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background, Evidence and Analysis

The tenancy began on November 1, 2011 and ended on April 30, 2014. The tenant was obligated to pay \$955.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$460.00 security deposit. Condition inspection reports in writing were not conducted at move in or move out.

I address the tenants' claims and my findings around each as follows.

**First Claim** – The tenant is seeking \$1500.00 for the return of what she alleges overpayment of utilities bills. The tenant stated that the tenancy agreement was that she was to pay 50% of the utilities bills. The tenant stated that she felt this was unfair as she was renting a basement suite and that owner that lived upstairs had multiple guests and family attending throughout the term of her tenancy. In addition, the tenant stated that the owner was running a part time hair salon upstairs. The tenant stated that the landlord always provided the original bills for her to view but feels that the appropriate amount should have been 33%.

The landlord disputes this claim. The landlord stated that the tenant never made issue of the cost of utilities and that she always had access to the original bills. The landlord stated the terms of the tenancy were discussed and that it is a fair agreement. The landlord stated that if the term was unfair why did the tenant renew her agreement? The landlord disputes that a hair salon was in operation. The landlord stated his mother cuts hair as a hobby for a few friends and has even cut the tenants hair.

Upon reviewing all the documentation and testimony presented, the tenant has not satisfied me that she is entitled to the amount as claimed. The tenant did not provide any documentation that would suggest the amount paid was an exorbitant amount. In the tenants own testimony she stated that the amount sought was her "best guess". The parties entered into a contract with specific terms and conditions in good faith and the tenant has failed to display any breach under the Act or tenancy agreement. Based on the above and on the balance of probabilities I dismiss this portion of the tenants' application.

**Second Claim** – The tenant is seeking the return of the remainder of her security deposit of \$111.24. The tenant stated that the landlord withheld that amount without her permission.

The landlord stated that the tenant caused some damage to the tile floor and that he felt he was being very fair with the time and money it cost him to repair it. The landlord acknowledged that he did not have an order from the Branch to withhold the amount or the consent of the tenant. The landlord acknowledged that he received the tenants forwarding address in writing several days after she moved out. The landlord stated that he mailed the tenant a cheque for the majority of the security deposit of \$348.76 to the address that she provided.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

The tenant is entitled to double the security deposit of \$460.00 X 2 = \$920.00 minus the \$348.76 that was previously returned for a total amount of \$571.24.

The tenant is entitled to the recovery of her \$50.00 filing fee.

### Conclusion

The tenant has established a claim for \$621.24. I grant the tenant an order under section 67 for the balance due of \$621.24. 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: December 2, 2014

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Residential Tenancy Branch

