



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

There are applications filed by both parties. The landlord seeks a monetary order for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The tenant has also made an application for a monetary order for money owed or compensation for damage or loss, the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The landlord has confirmed receipt of the tenant's notice of hearing package and the submitted documentary evidence. The tenant states that he is unaware of any application or evidence filed by the landlord. The landlord confirmed in his direct testimony that he served the tenant with the notice of hearing package and the submitted documentary evidence to the address provided on the tenant's application for dispute. The tenant stated that after filing the application for dispute resolution the tenants both moved out of the country and did not provide a new forwarding address in writing to the Residential Tenancy Branch nor the landlord. The tenant stated that most likely the mail is being forwarded by his last landlord.

I find that both parties have been properly served with the notice of hearing package and the submitted documentary evidence as per the Act. The landlord has acknowledged service of both from the tenant. The tenant is deemed to have been properly served as the landlord has properly served the tenant as per the Act. The tenant failed to update his mailing address for contact with the RTB or the landlord after moving out of the country. During the hearing the landlord's material would be described where possible to the tenant to allow for a response.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit?

Is the tenant entitled to a monetary order?

### Background and Evidence

This tenancy began on September 1, 2012 on a fixed term tenancy ending on August 31, 2013 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement. Both parties confirmed that the tenancy ended on July 1, 2014. The monthly rent was \$900.00 at the end of the tenancy which was payable on the 1<sup>st</sup> of each month and a security deposit of \$450.00 was paid.

Both parties confirmed that no condition inspection reports for the move-in or the move-out were completed. Both parties confirmed that the landlord received the tenant's forwarding address in writing on the last day during the walk through inspection on July 1, 2014.

The landlord is seeking a monetary claim of \$595.00 which consists of \$80.00 for the cost of professional cleaning, \$109.00 for rubbish removal and \$280.00 for 7 hours of cleaning at \$40.00 an hour as the tenant left the rental unit dirty requiring a lot of cleaning.

The tenant disputes the claim of the landlord stating that at the end of the tenancy a walk through was made with the landlord and that there was no mention of additional cleaning.

The landlord relies on photographs taken of the rental unit after the tenancy ended and after the cleaning was done by the landlord. The landlord states that the previous tenant left this tenant a wooden tv stand which was the responsibility of the tenant to remove.

The tenant disputes that the tv stand was there when he moved in and left it as they thought that it belonged to the landlord.

The tenants seek a monetary claim of \$1,800.00 consisting of the return of double the security deposit of \$450.00 and \$900.00 for compensation for the landlord's notice to end the tenancy.

The tenant states that the landlord failed to return the original \$450.00 security deposit within 15 days after the end of the tenancy. The tenant also states that the landlord gave 2 months notice to end the tenancy for landlords use, but failed to compensate the

tenants as per the Act. The tenant clarified that there was no actual written notice given by the landlord, but that the tenant was verbally told by the landlord to vacate the rental unit by a specific time and the tenant complied.

The landlord confirmed in his direct testimony that the \$450.00 security deposit was not returned to the tenant within the allowed time frame nor did the landlord have permission from the tenant or the Residential Tenancy Branch to without it.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age. The landlord's claim is being disputed by the tenant and the landlord relies on photographs taken after the tenant vacated the rental unit. Both parties confirmed that there were no condition inspection reports for the move-in or the move-out to show the state of the rental unit during the tenancy.

I find that the landlord has failed to provide sufficient evidence to satisfy me that the damage occurred as a result the tenant's actions or neglect. As such, the landlord's application is dismissed.

As for the tenant's monetary claim. Section 38 of the Residential Tenancy Act speaks to the return of the security deposit and states,

38 (1) 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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) 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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

It is clear based upon the landlord's direct testimony that the \$450.00 security deposit was not returned to the tenant within the allowed timeframe. The landlord did not have permission to retain the security deposit and nor did the landlord have an order from the Residential Tenancy Branch Authorizing the landlord to retain it. The tenant has established a claim for the return of double the security deposit as per Section 38 (6). The tenant has established a monetary claim of \$900.00.

As for the tenant's claim for \$900.00 for compensation, I find that the tenant has failed. The tenant's direct testimony state that the tenant did not receive a 2 month notice to end tenancy issued for landlords use, but instead a verbal request from the landlord to vacate the rental unit which he chose to comply with. As such this portion of the tenant's claim is dismissed.

The tenant is granted a monetary order for \$900.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord's monetary claim is dismissed.  
The tenant is granted a monetary order for \$900.00.

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 29, 2015

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Residential Tenancy Branch

