



# Dispute Resolution Services

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. Both parties participated in the conference call hearing.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The facts are not in dispute. The tenancy began on October 1, 2013 and ended on September 27, 2014. At the outset of the tenancy, the tenant paid a \$430.00 security deposit. At the end of the tenancy, the parties conducted an inspection of the rental unit and the tenant signed a form entitled "Move Out Statement of Account" (the "Report") on which she agreed to some deductions. After the inspection was completed, the landlord filled in specific deductions to which she believed the tenant had agreed. The landlord returned just \$210.00 of the security deposit. The tenant seeks the return of the balance of the deposit.

### Analysis

Section 36(2) of the Act provides as follows:

- 36** (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 38 of the Act provides as follows:

**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.

Section 20 of the *Residential Tenancy Regulation* outlines the requirements for a condition inspection report and states that the report must include, amongst other things, a statement of the state of repair and condition of each room and a specific statement which allows the tenant to indicate agreement or disagreement with the report. I find that the Report used by the landlord does not meet the requirements of the Regulation as it does not state the condition of each room and does not include the aforementioned statement permitting the tenant to disagree with the content of the Report.

I find that pursuant to section 36(2)(c), the landlord has not complied with the requirements of the Regulation and has therefore extinguished her right to file a claim against the deposit.

Although the tenant signed in agreement to some deductions, I find that section 38(5) operates to prevent the landlord from obtaining that written consent. I therefore find that because the landlord extinguished her right to claim against the security deposit, she did not have the right to obtain written consent to retain any part of the deposit and was therefore barred from retaining the \$220.00 balance of the deposit.

I find that the tenant is entitled to the return of the \$220.00 security deposit and I order the landlord to pay her that sum. I further find that as the tenant has been successful in this application, she should recover the \$50.00 filing fee from the landlord and I award her that sum for a total award of \$270.00. I grant the tenant a monetary order under section 67 for \$270.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The tenant is awarded \$270.00.

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: June 17, 2015

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Residential Tenancy Branch

