



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Tenant's application: MNSD

Landlord's application: MND, MNSD, MNDC, FF

### Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing. The landlord submitted photographs and some documents in support of her application on April 13, 2015.

### Issue(s) to be Decided

Is the tenant entitled to the return of his security deposit, including double the amount of the deposit?

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain all or some part of the security deposit?

### Background and Evidence

The rental unit is a basement suite in the landlord's house in Surrey. There is no written tenancy agreement. The tenancy began in March or April, 2012. The monthly rent was \$525.00, but the tenant paid a security deposit of \$300.00 at the start of the tenancy in 2012.

The tenant testified that he moved out in August 2014 at the request of the landlord. The tenant said that the landlord asked him to move so her son could live in the suite.

The tenant gave the landlord his forwarding address in writing. The letter was dated September 12, 2014 and requested that the landlord return the tenant's \$300.00 deposit. The letter was hand delivered to the landlord on September 14, 2014.

The tenant filed his application to claim the deposit on October 9, 2014. The landlord acknowledged that she was served with the tenant's application for dispute resolution. The landlord has not returned the tenant's security deposit. She filed her application for dispute resolution on March 23, 2015. In her application the landlord claimed payment of the sum of \$1,196.52, made up of the following:

• Carpet cleaning:	\$49.96
• Carpet replacing:	\$196.56
• Painting:	\$225.00
• Clean up the suite:	\$200.00
• Lost one month of rent:	\$525.00
 Total:	 \$1,196.52

The landlord said that the tenant did not keep the suite clean during the tenancy and she said his personal hygiene was terrible. The landlord claimed that the smell in the suite was so overpowering that she was unable to re-rent the suite in the month after the tenant left. The landlord referred to photographs of the rental unit that she said were taken after the tenant moved out and showed the need for cleaning, painting and carpet replacement. The tenant said the stove was particularly dirty and she claimed that the tenant made a hole in the floor and also made a hole in the bathroom wall. The landlord submitted a receipt for rental of a carpet cleaner; the receipt was dated October 12, 2014. The landlord submitted several receipts, hand written on plain paper. One receipt was dated October 12, 2014 in the amount of \$225.00 said to be for painting the basement suite. Another dated October 15, 2014 was for \$200.00, said to be for cleaning the basement suite. The landlord submitted a copy of a handwritten invoice on the letterhead of a carpet company, dated October 20, 2014 for carpet installed in the amount of \$196.56.

The landlord did not provide a condition inspection report, either for the move-in or the tenant's move-out from the rental unit. The landlord submitted a copy note dated March 29, 2015 said to be from a former occupant of the rental unit; it said: "I was the last tenant to live in the basement suite at (address). I left the suite as clean as can be and was in almost new condition."

The tenant denied the landlord's claims about his hygiene, about odours in the rental unit and about the need for cleaning. He said the rental unit had an unfinished wall and

needed paint when he moved in. He said it was adequately cleaned when he moved out.

### Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenant provided the landlord with his forwarding address in writing on September 14, 2014, and I find that the tenant served the landlord with documents notifying the landlord of this application as required by the *Act*.

The landlord received the tenant's forwarding address on September 14, 2014. She had 15 days from that day to claim the deposit. The landlord did not submit her claim for the deposit and damages until March 23, 2015. The tenant's security deposit was not refunded within 15 days and the landlord did not file her claim within 15 days of receiving the tenant's forwarding address as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award him the sum of \$600.00, being double the amount of his deposit.

The landlord's claim against the security deposit has been extinguished, but that does not preclude her from making a claim for damages, including the cost of cleaning and repairs. The landlord did not provide any condition inspection reports and the tenant disputes her evidence as to the condition of the rental unit when he moved out. I find that the landlord's photographs, taken after the tenant moved out, do support her testimony that the unit was not properly cleaned at the end of the tenancy. Although the tenant testified that he moved out at the end of August, it appears that the landlord did not perform any cleaning or repairs until October. There is no basis for the landlord's claim for loss of rental income and it is denied. In the absence of a move-in condition inspection I do not allow the landlord's claims for painting the rental unit or for carpet replacement. Based on the photographic evidence supplied, in particular pictures that showed that the tenant made no attempt to clean the appliances, I find that the tenant

failed to perform necessary cleaning at the end of the tenancy. I allow the landlord's claim for cleaning in the amount of \$200.00. All other claims by the landlord are dismissed without leave to reapply. I decline to award the landlord the filing fee for her application since her claim was filed late and was largely unsuccessful.

### Conclusion

Although the landlord's right to make a claim against the security deposit has been extinguished, pursuant to section 72 of the *Residential Tenancy Act* I may set off the monetary award to the landlord against the amount due to the tenant. The tenant's award is therefore reduced by \$200.00 to satisfy the award in favour of the landlord and I grant the tenant an order under section 67 in the amount of \$400.00. This order may be registered 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: June 09, 2015

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Residential Tenancy Branch

