



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes          MNSD, O

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover double the security deposit; plus other issues regarding compensation.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the tenant entitled to recover double the security deposit?
- Is the tenant entitled to any other monetary award?

### Background and Evidence

The parties agreed that this month to month tenancy started on October 01, 2012. Rent for this unit was \$475.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$240.00 at the start of the tenancy. The parties agreed that the landlord did not conduct a move in or a move out condition inspection of the unit. The tenant sent his forwarding address to the landlord on October 20, 2014 by registered mail. This was deemed to have been served five days later although the landlord refused to accept the mail.

The tenant testified that the landlord has not returned the tenant's security deposit nor has the landlord filed a claim to keep the deposit since the tenant vacated the unit in October, 2015. The tenant testified that he vacated on October 07, 2014 although he had paid rent for the entire month of October.

The tenant testified that he has never given the landlord permission to keep all or part of the security deposit and therefore the tenant seeks to recover double the security deposit to an amount of \$480.00.

The tenant testified that he suffered with two floods in the spring of 2013 and 2014. The property had a pump which was supposed to divert water away from the house; however, the pump failed and water leaked into the living room of the unit soaking the carpet. The tenant testified he used his own towels and pans to collect and mop up the water and lifted the carpet to dry it out with fans. The tenant notified the landlord of this flood and the landlord sent someone to replace the pump. That pump kept breaking down and water kept leaking into the unit.

The second flood occurred the following spring. The tenant again notified the landlord and after four pumps were fitted the forth pump final worked. The tenant testified that he was left with a bad musty smell in the unit and tried to negotiate a rent reduction with the landlord to cover the cost of cleaning the carpet. The landlord said they would talk about it later but nothing was ever provided to the tenant.

The tenant testified that in March, 2014 he rented a carpet cleaner for \$31.00 and purchased carpet cleaning supplies for \$90.00. The tenant has provided a carpet cleaning receipt dated March 14, 2014. The tenant testified he spent five hours cleaning the carpet and seeks to recover \$16.00 per hour for his labour to an amount of \$80.00.

The tenant testified that he had given the landlord notice to end tenancy on October 02, 2014 and had planned to stay in the unit until the end of October. The tenant testified that he suffered a break in in his unit on October 05, 2014. Some money and belongings were stolen. The tenant contacted the police but they could not do anything, the tenant also reported it to the landlord but could not reach him for three days. The tenant testified that he could not make his unit secure as the door opened outwards and he was worried about further break-ins. On the third day the tenant had to go to work and was forced to leave the door unlocked. When the landlord finally made contact he told the tenant he had left his phone at his brother's home.

The tenant testified that he started to look for alternative accommodation as he was worried about not being able to have a secure unit. He found a new unit to rent and moved out on October 07, 2014. Meanwhile the landlord had sent someone over to fix the door. The tenant had already secured new accommodation by this time.

The tenant testified that he had paid rent of \$475.00 for October to the landlord but also had to pay half a month's rent to his new landlord of \$350.00. The tenant seeks to recover 60 percent of his rent paid (\$285.00) to the landlord because the landlord did not act in a timely manner and secure the door.

The tenant seeks to recover \$15.00 from the landlord for the cost of serving the landlord documents by registered mail.

The landlord disputed the tenant's claim to recover double the security deposit. The landlord testified that he did not return the security deposit because of the damage done to the door of the unit. The landlord testified that the tenant may have left his keys in the unit and kicked the door down to gain entry. The landlord testified that there are three other doors to units and no one else suffered a similar break in. the landlord testified that there is no evidence that the tenant's unit was broken into. The landlord testified that he had received the

tenant's message about the door and the landlord sent his manager to the unit the same day the tenant called to secure the door. The manager returned the next day to fit a metal plate and secure the deadbolt and replace the lock.

The landlord testified that the tenant's door was never left unsecured and the tenant had already decided to move out as he had called the landlord on October 02, 2014 to give 30 days' notice. The tenant wanted some rent refunded for October but the landlord told the tenant he had to give 30 days' notice. The cost to repair the door was \$240.00.

The landlord testified that there was a pump in place to remove water from the back of the house but when it got cold the pump stopped working. The tenant informed the landlord of a flood in the spring of 2013 and the landlord gave the tenant a rent reduction of \$50.00 a month for January, February and March to cover his labour costs in dealing with the flood. The tenant pulled up the carpet and had two fans in place to dry it out.

The landlord testified that he was not aware of a second flood occurring in the spring of 2014. The tenant rented the carpet cleaner to clean the carpets at the end of the tenancy as required when a tenant vacates a rental unit. The landlord testified that he has a manager for the unit that the tenant could have contacted if he had any concerns or damage.

the tenant disputed the landlord's claims. The tenant testified that the first flood did occur in 2013 and the landlord did give the tenant a rent rebate of \$150.00. The tenant testified he is asking for his labour costs to deal with the second flood in 2014 of which he had informed the landlord. The landlord would be aware of this as the final pump was fitted in March or April, 2014. The tenant testified he would not have hired a carpet cleaner in March, 2014 if he was not moving out at that time. It was rented to clean the musty smell from the carpet after the second flood occurred.

The tenant testified that he was never made aware of a manager acting for the landlord and was never given a number or name for a manager. The tenant always contacted the landlord about any issues. The tenant testified that the landlord's manager did not come out and secure the unit on the day the tenant contacted the landlord. If the unit had been secure the tenant would not have moved out early and been forced to pay extra rent somewhere else.

The tenant asked the landlord how he could have broken into his own unit when he was out with his mother at the time it was broken into. The landlord responded that it could have been done earlier. The tenant asked the landlord if he had left his phone at his brothers how could the landlord have gotten the text message from the tenant, then texted the tenant back and then sent someone to fix the door. The landlord responded that he did receive a message from the tenant and he sent his manager the same evening.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenant's claim to recover double the security deposit; Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants

forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Sections 23(4) of the *Act* require a landlord to complete a condition inspection report at the start of a tenancy and to provide a copy of the report to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection when the tenant moved in to the unit, I find the landlord contravened s. 24(2)(c) of the *Act*. Consequently, s. 24(2) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished the landlord must return the security deposit to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing whichever is the later date.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on October 25, 2014 as it was sent by registered mail and is deemed to have been served five days after it was sent pursuant to s. 90(a) of the *Act*. The tenancy ended on October 31, 2014. As a result, the landlord had until November 15, 2014 to return all of the tenant's security deposit. As the landlord failed to do so, the tenant has established a claim for the return of double the security deposit to an amount of **\$480.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

With regard to the tenant's claim to recover the costs incurred to clean the carpets after the flood occurred in 2014. The tenant seeks the sum of \$31.00 to rent the carpet cleaner, \$90.00 for supplies to clean the carpets and \$80.00 for his labour. The landlord has argued that the tenant rented this machine to clean the carpets at the end of his tenancy which he must do and that no flood occurred in 2014. I am satisfied from the evidence before me that the tenant did rent a carpet cleaner on March 14, 2014. The tenancy did not end until October, 2014; therefore, I find the tenant's testimony that he suffered with a second flood in the spring of 2014 and had to clean the carpets as a result of that flood to be more credible. I therefore uphold the tenant's claim to recover \$31.00 to rent the carpet cleaner. The tenant has insufficient evidence to show he paid \$90.00 for supplies to clean the carpet; however, I am satisfied that some shampoo would have to be purchased to use in the carpet cleaning machine. I therefore limit the tenant's claim to \$50.00. I uphold the tenant's claim to recover his labour costs of \$80.00 to clean the carpets. The tenant is entitled to a monetary award for carpet cleaning of **\$161.00**.

With regard to the tenant's claim to recover rent of 60 percent for October; the tenant had given the landlord Notice to End Tenancy on October 02, 2014 and had planned to stay in the unit until the end of October. The tenant testified that he was forced to end the tenancy on October 07, 2014 due to a break in in his unit and then had to pay rent at a new rental unit. The landlord disputed this and testified that the tenant could have caused the damage to his door himself. The tenant has the burden of proof in this matter that he was broken into which caused damage to the door making the unit unsecure and that the landlord did not

make repairs in a timely manner. I am not satisfied with the evidence before me that the tenant did suffer a break in. The tenant has provided insufficient evidence such as a police file number or report detailing a break in at his unit which made the unit unsecure. The tenant has insufficient evidence to show the landlord did not repair the door in a timely manner. Consequently, I find the tenant has failed to meet the burden of proof and his claim to recover 60 percent of his rent paid for October is dismissed.

With regard to the tenant's claim to recover registered mail costs; there is no provision under the *Act* for the costs of registered mail to be recovered from the other party. This section of the tenant's claim is therefore dismissed.

### Conclusion

I hereby issue a Monetary Order in the tenant's favor in the amount of \$641.00 pursuant to s. 67 of the Act:

Item	Amount
Double the security deposit	\$480.00
Carpet cleaning	\$161.00
<b>Total Monetary Order</b>	<b>\$641.00</b>

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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 22, 2015

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Residential Tenancy Branch

