



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            FF, MNR, MND, MNSD & MNDC

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was filed by the landlord was sufficiently served by mailing, by registered mail on March 13, 2015. I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was sufficiently served on the landlord on July 30, 2015.

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?
- d. Whether the tenant is entitled to a monetary order and if so how much?
- e. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a six month written tenancy agreement that provided that the tenancy would start on September 1, 2013, end on February 22, 2014 and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$650 per month

payable in advance on the first day of each month. The tenant originally paid a security deposit of \$325. However, the parties have agreed the landlord could retain \$50 of the sum for other purposes leaving a balance of \$275.

The tenant allowed guests to live in the rental unit after he had vacated.. At the end of January the tenant gave notice he was vacating at the end of February. He had already vacated by that time. His guests did not vacate until around 9:00 p.m. that night.

The new tenant was delayed in moving into the rental unit. I accept the testimony of the landlord that the guests/tenant failed to sufficiently clean the rental unit. The landlord and the new tenant entered into an agreement where the landlord paid the new tenant the sum of \$75 for the cost of cleaning.

#### Landlord's Claim:

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

#### Monetary Order and Cost of Filing fee

I determined the landlord has established a claim against the tenant in the sum of \$75 for the cost of cleaning. The guests of the tenant over-held. I accept the evidence of the landlord that the rental unit was not sufficiently clean. I do not accept the submission of the tenant that he is not obliged to clean the rental unit because he left the rental unit in a better condition than when he took possession. The tenant was not present when the landlord took possession at the end of February. The test is whether the tenant has left the rental unit in the condition required by the Act. I determined the landlord is entitled to the \$75 claimed.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$75 plus the \$50 filing fee for a total of \$125.

### Security Deposit

Section 72 of the Residential Tenancy Act provides as follows:

#### **Director's orders: fees and monetary orders**

**72** (1) The director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

The landlord holds a security deposit in the sum of \$275. I ordered the landlord may retain the sum of \$125 from the security deposit. I further ordered that the landlord pay to the tenant the balance of the security deposit in the sum of \$150.

### Tenant's Claim:

Section 38 provides as follows:

#### **Return of security deposit and pet damage deposit**

**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.

...

(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.

The tenant testified he provided the landlord with his forwarding address in writing on March 9, 2015. The landlord filed an Application for Dispute Resolution with the Residential Tenancy Branch on March 13, 2015. The landlord has complied with section 38(1) by filing an Application for Dispute Resolution within 15 days of the later of the end of the tenancy or the date the landlord receives the tenants forwarding address in writing. As a result I determined the landlord has complied with section 38(1) of the Act and the tenant is not entitled to the doubling of the security deposit under section 38(6).

I dismissed the tenant's claim for the return of his security deposit and the cost of the filing fee as it was not necessary for the tenant to file his claim. The Act and Policy Guidelines provide that where a landlord has applied to keep the security deposit and that claim was dismissed or a partial award has been made, the arbitrator will order the return of the balance of the security deposit if any to the tenant.

Conclusion:

**In summary I ordered that the landlord shall retain \$125 of the security deposit. I further ordered that the landlord pay to the tenant the balance of the security deposit in the sum of \$150.** The tenant's application is dismissed.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the 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: August 18, 2015

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Residential Tenancy Branch

