



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for the return of her security deposit and to recover the filing fee.

Two agents for the Landlord (referred to in this Decision as “CB” and “RB”), and the Tenant appeared for the hearing. The parties provided affirmed testimony. CB confirmed receipt of the Tenant’s Application and her documentary evidence. CB also confirmed that they had not submitted any evidence prior to the hearing as they were relying on the Tenant’s evidence.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. However, while I have considered the evidence provided by the parties in this case, I have only documented that evidence which I relied upon to make findings in this decision.

### Issue(s) to be Decided

Is the Tenant entitled to the return of her security deposit?

### Background and Evidence

The parties agreed that this tenancy started on April 1, 2012 for a fixed term tenancy. The tenancy then continued with a number of renewed fixed term tenancies with the last one being signed on August 9, 2014; that tenancy started on September 1, 2014 and was due to end on August 31, 2015. However, the tenancy ended on April 30, 2015. Rent for that tenancy was payable in the amount of \$1,175.00 and the parties agreed

that the Tenant had paid a \$575.00 security deposit at the start of the tenancy. I note that no interest is payable on this amount.

RB testified that three months prior to the ending of the fixed term tenancy, the Tenant indicated that she was in the process of purchasing a property next door to the rental unit. After the sale of the property completed the Tenant provided him with an email informing them that she would be vacating the rental unit on April 30, 2015.

CB testified that shortly after the tenancy ended, on or about April 2, 2015 he conducted a move out condition inspection with the Tenant. CB testified that he informed the Tenant that as she had breached the fixed term tenancy by ending it prematurely and that she would be responsible for the resulting costs which the Landlord estimated in the amount of \$616.88. CB testified that at this point the Tenant began to cry and informed him that as she had just purchased the property next door she could not afford this amount.

CB testified that he took pity on the Tenant and agreed that he would only charge her \$300.00 for the breaking of the fixed term tenancy and that this relief would be obtained from the Tenant's security deposit. CB referred me to a document in the Tenant's evidence titled "OUT INSPECTION WORKSHEET" which shows that he had recorded an amount of \$300.00 as a "TOTAL DEDUCTION" and \$275.00 was recorded as "BALANCE OF SECURITY DEPOSIT TO REFUND TENANT". The document shows the Tenant's signature at the bottom.

The Tenant testified that she had provided the Landlord with a forwarding address by email on May 6, 2015 and provided a copy of this email into evidence. The Tenant testified that's she went to the Landlord's business office on May 13, 2015 at which point they returned to her \$275.00.

CB confirmed that he had received the Tenant's forwarding address on May 6, 2015 by email and that as per the "OUT INSPECTION WORKSHEET" they deducted the amount the Tenant had consented to. For this reason they did not need to make any Application.

When the Tenant was asked to comment on the "OUT INSPECTION WORKSHEET" the Tenant stated that she did sign and consent to the deduction but this was signed under duress because the Landlord left her no other option. The Tenant stated that she was from Ontario and did not know that by signing the document she would be releasing a portion of her security deposit. The Tenant submitted that the Landlord should not have been allowed to have charged her in this amount. The Tenant's

Application claims double the amount because the Landlord did not return her full security deposit back after she provided the Landlord with written notice of her forwarding address in writing.

### Analysis

Section 38(4) (a) of the Act provides that a landlord may retain an amount from a security deposit if after the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay for a liability or obligation of the tenant.

In this case, I am satisfied the Tenant consented to the Landlord in writing to make the \$300.00 deduction from her security deposit on the "OUT INSPECTION WORKSHEET". I find the Tenant failed to provide sufficient evidence that she was coerced into signing over this amount from her security deposit. I find that if the Tenant did not want to sign this document she was not prevented from doing so by the Landlord.

Therefore, the Landlord had a right under the Act to make a deduction of \$300.00 from the Tenant's security deposit. I find that the Landlord returned the remaining amount of \$275.00 back to the Tenant pursuant to the time limits of the Act. As a result, I find the Tenant's Application for the return of her security deposit has no merit and is accordingly dismissed. As the Tenant has not been successful with her Application, I also decline to order the Landlord pay her filing fee.

### Conclusion

The Landlord dealt with the Tenant's security deposit in accordance with the Act. Therefore, the Tenant's Application is dismissed without leave to re-apply.

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: October 22, 2015

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Residential Tenancy Branch

