



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This was a hearing with respect to an application by the landlord for a monetary award. The hearing was conducted by conference call. The landlord's representative and the tenant called in and participated in the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award in the amount of \$500.00 as claimed?

### Background and Evidence

In this application the landlord claimed a monetary award in the amount of \$500.00 said to be for repayment of a move-in bonus given to the tenant. The landlord has claimed that the bonus should be repaid because the tenant did not fulfill the terms. There was an earlier dispute resolution proceeding brought by the landlord with respect to this tenancy. The landlord's representative attended the hearing on October 2, 2014, but the tenant did not attend. In a decision dated October 7, 2014 the arbitrator recorded that the tenancy began July 15, 2013 for a fixed term with rent in the amount of \$915.00 payable on the first of each month. The tenant paid a security deposit of \$457.50 at the start of the tenancy. The tenant moved out of the rental unit on May 31, 2014 before the end of the fixed term. The landlord claimed payment of \$500.00 which was given as a rent abatement for the first month of the tenancy and the further sum of \$100.00 for carpet cleaning. The evidence disclosed that at the time of the move-out inspection tenant paid the landlord the sum of \$350.00 as a lease breaking fee and disputed the landlord's claim for payment of the \$500.00 rent incentive. According to the decision these facts were recorded on the condition inspection report. The arbitrator noted the landlord's evidence that on August 8, 2014 the landlord mailed a cheque to the tenant in the amount of \$315.00 as a partial return of the tenant's security deposit.

The arbitrator dismissed the landlord's application with leave to reapply because the landlord had acted inconsistently with respect to the tenant's security deposit. She was unsure whether the tenant was aware of the landlord's position given its inconsistent actions and found that it would be administratively unfair to proceed without giving the tenant notice that the landlord still wished to proceed with a claim against the tenant.

The landlord submitted a new application for dispute resolution on October 23, 2014 to claim the sum of \$500.00. The landlord submitted a typed note as evidence dated October 30, 2014. It stated that the landlord was holding a security deposit of \$475.50 and a pet deposit of \$475.50 from which it had deducted \$100.00 for carpet cleaning and \$500.00 for a move in bonus and refunded the balance of \$315.00 to the tenant.

Although the tenancy agreement referred to a pet deposit I was told that the tenant paid a security deposit only and no pet deposit was paid.

### Analysis

The tenant did not agree to the repayment of a rent incentive and based on the landlord's contradictory and inconsistent actions since the tenancy ended in May, 2014, I find that the landlord is not entitled to recover a rent incentive or a monetary award in any amount. I dismiss the landlord's claim for recovery of a rent incentive without leave to reapply.

Based on the evidence provided, the landlord continues to hold the balance of the tenant's security deposit in the amount of \$160.50, being the balance of the tenant's \$475.50 security deposit after deducting the sum of \$315.00 returned to the tenant.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

### **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
  - a landlord's application to retain all or part of the security deposit, or
  - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord has apparently requested the retention of the balance of the tenant's security deposit in partial satisfaction of the monetary claim. Because the claim has been dismissed in its entirety without leave to reapply it is appropriate that I order the return of the remainder of the tenant's security deposit; I so order and I grant the tenant a monetary order in the amount of \$160.50. This order may be registered in the Small Claims Court and enforced as an order of that court.

### Conclusion

The landlord's application has been dismissed without leave to reapply the tenant has been granted a monetary award for the balance of the security deposit.

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 2, 2015

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Residential Tenancy Branch

