



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, RPP, FF

### 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; for an Order for the landlord to return the tenant's personal property; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord's agent (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties 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 a Monetary Order to recover double the security deposit?
- Is the tenant entitled to an Order for the landlord to return personal property?

### Background and Evidence

The parties agreed that this tenancy started on August 01, 2013 for a fixed term of one year. The tenancy was then extended for a further year to July 31, 2015 and the tenant vacated the

rental unit on that date. Rent for this unit was \$1,550.00 at the end of the tenancy and the tenant paid a security deposit of \$750.00 on July 29, 2013.

The tenant testified that at the end of the tenancy the landlord did not do the move out condition inspection report with the tenant or his daughter. The tenant provided a forwarding address first by text message on August 04, 2015 and then in writing on August 20, 2015. This was sent to the landlord by registered mail. The tenant testified that they did not give the landlord written permission to keep any of the security deposit. The tenant testified that the landlord did not return the security deposit in full within 15 days of receiving the tenant's forwarding address in writing. The landlord did; however, return \$209.25 to the tenant on October 26, 2015. The landlord withheld the amount of \$540.75 for a repair to a column at the entrance to the building. The tenant denies that he or his movers caused this damage. The tenant seeks to recover double the security deposit less the amount returned to him.

The tenant testified that at the end of the tenancy he accidentally left his clock in the unit. The tenant seeks an Order to have the landlord return the clock to the tenant.

The landlord testified that he has the tenant's clock and did send the tenant an email about picking his clock up. The parties agreed that they would meet at 10.30 on Saturday November 21, 2015 for the tenant to retrieve his clock from the landlord.

The landlord testified that the move out inspection was not done as the tenant was delayed in moving out of the unit. The tenant should have moved out by 1.00 p.m. but as he had problems with his movers he was still moving out at 10.30 p.m. and the tenant's carpet cleaner arrived at midnight to clean the carpets. This did not allow the landlord time to do the move out inspection with the tenant as the tenant was not at the unit at midnight and the tenant's daughter asked a friend to return the keys to the landlord.

The landlord testified that he withheld \$540.75 for a repair required to part of the Strata property that the tenant had damaged when moving out. The landlord agreed he did receive the tenant's forwarding address but was delayed in returning the balance of the deposit because of the strata council and the tenant.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 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 tenant's 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 35(3) of the *Act* require a landlord to complete a condition inspection report at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. The landlord must arrange the inspection with the tenant on the last day of the tenancy or on another mutually agreed day before new tenants move into the rental unit. The landlord must also provide the tenant with at least two opportunities to attend the move out inspection. In failing to complete the condition inspection when the tenant moved out, I find the landlord contravened s. 35(3) of the *Act*. Consequently, s. 36(2)(a) 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.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on August 25, 2015 five days after it was sent by registered mail pursuant to s. 90(a) of the *Act*. As a result, the landlord had until September 09, 2015 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 **\$1,500.00**, 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.

As the landlord has returned the amount of \$209.25 I have deducted this from the tenant's monetary award. As the tenant's claim has merit I find the tenant is entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenant pursuant to s. 38(6)(b) and 72(1) of the *Act* as follows:

Double the security deposit	\$1,500.00
Less amount returned	(-\$209.25)
Plus the filing fee	\$50.00
Total amount due to the tenant	\$1,340.75

### Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,340.75**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial Court (Small Claims) as an Order of that Court.

As the parties have reached an agreement concerning the tenant's personal property, I have not made a decision in that matter.

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: November 18, 2015

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Residential Tenancy Branch

