



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$1200 for double the security deposit plus \$200 for reimbursement of a portion of the rent..
- b. An order to recover the cost of the filing fee.

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 sufficiently served on the landlord as the landlord acknowledged receipt of the documents. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into an oral tenancy agreement that provided that the tenancy would start on September 15, 2014. The rent was \$1200 per month payable in advance on 15<sup>th</sup> day of each month. The tenant(s) paid a security deposit of \$600 at the start of the tenancy.

The tenant testified that in early February he gave notice he was vacating the rental unit. He testified he subsequently agreed to vacate early and the parties agreed he would be reimbursed \$200 of the rent for vacating 5 days early. The landlord disputes this. She testified she agreed to reimburse the rent only if the tenant left the rental unit in good condition and he failed to do this. The tenant vacated the rental unit on March 10, 2016.

The tenant(s) provided the landlord with his/her their forwarding address in writing on April 6, 2016. The landlord mailed a cheque to the Tenant in the sum of \$425. The tenant did not cash it because it wasn't the full amount. He testified he does not know where to find the cheque.

The landlord has filed a claim that was set down for hearing on February 6, 2017.

### Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Policy Guideline #17 includes the following:

“3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit<sup>15</sup>:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act<sup>16</sup>;
- if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;
- if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

4. In determining the amount of the deposit that will be doubled, the following are excluded from the calculation:

- any arbitrator's monetary order outstanding at the end of the tenancy;
- any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit<sup>18</sup> (see example B below);
- if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished<sup>19</sup>, any amount the tenant has agreed in writing the landlord may retain for such damage.

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ( $\$400 \times 2 = \$800$ ), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is  $\$525.00$  ( $\$800 - \$275 = \$525$ )."

### Analysis

The tenants paid a security deposit of \$600 on September 14, 2014. I determined the tenancy ended on March 10, 2016. I further determined the tenants provided the landlord with their forwarding address in writing on April 6, 2016. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. As a result I determined the tenants have established a claim against the landlord for double the security deposit or the sum of \$1200.

I accept the representation of the Tenant that he no longer has the cheque the landlord provided and has no intention of cashing it if he finds it.

I determined the tenant is entitled to \$200 for vacating the rental unit 5 days earlier. I find as a fact the parties agreed to this amount. I do not accept the testimony of the landlord that she agreed to reimburse the \$200 only if it was left in a good condition. The text messages between the parties do not indicate a conditional agreement.

### Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1400 plus the sum of \$100 in respect of the filing fee for a total of \$1500.

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, 2016

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Residential Tenancy Branch