



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

Tenant: MNSD, MNDC  
Landlord: MNSD, O(other), FF

### Introduction

This hearing was convened in response to cross-applications by the parties.

The landlord filed on **February 11, 2016** pursuant to the *Residential Tenancy Act* (the Act) for Orders, as amended in the hearing, as follows:

1. An Order to retain the security deposit – Section 38
2. An Order to recover the filing fee for this application - Section 72.

The tenant filed on **September 02, 2016** for Orders, as amended in the hearing, as follows;

1. An Order for the return of the security deposit – Section 38
2. A monetary Order for damage / loss – Section 67

Both parties attended the hearing and were given opportunity to present all relevant evidence and testimony in respect to their claims and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. Both parties acknowledged receiving all of the evidence of the other as provided to this hearing.

During the hearing both parties clarified their respective claims and consequently orally amended their claims. Only the relevant residual claims of the parties are reflected in

this Decision. Therefore, the parties' respective claims before this proceeding are as follows.

Landlord:

Retain security deposit for 3 vanity light bulbs – improper wattage	\$30.00
Retain security deposit for 4 pot light bulbs – improper wattage	\$16.00
Retain security deposit for 2 hours cleaning @ \$25/hr	\$50.00
Filing Fee for the cost of this application	\$100.00

Tenant:

Security deposit	\$350.00
Double security deposit – Section 38(6)	\$350.00
Tenant's compensation for 2 Month Notice to End – Section 51	\$789.25

**Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

**Background and Evidence**

The undisputed relevant facts of the parties before me are as follows.

The tenancy began January 01, 2008. Rent was \$789.25 payable in advance on the 1st. of every month. The landlord collected a security deposit of \$350.00 at the outset of the tenancy, which the landlords retain in trust. The tenancy ended pursuant to the tenant receiving a 2 Month Notice to End for Landlord's Use for the reason the landlord intended to occupy the unit pursuant to Section 49(2)(3). The parties agree the tenant received the landlord's 2 Month Notice to End on January 01, 2016 after the landlord posted the notice on the tenant's door and placed it in the mailbox on December 30, 2015. It was explained to the parties that the notice is deemed received, and also was actually received, in the month of January had an automatically adjusted *effective date* of March 31, 2016. The tenant did not dispute the 2 Month Notice and vacated after

providing the landlord with a 10 day notice to end the tenancy earlier than the effective date of the 2 Month Notice, and paying the rent to the end of the effective date of that 10 day notice: which in this matter was for the month of January 2016. The parties agreed the tenant did not receive compensation due to the tenant for receiving the 2 Month Notice to End.

The parties agreed there was no *move in* condition inspection conducted at the start of the tenancy. The parties agreed they both initially met to conduct the *move out* condition inspection however the parties disagreed as to the sufficiency of the inspection and the landlord did not complete a condition inspection report as a result of that inspection. The landlord did not provide a second opportunity to the tenant for an inspection. However, the landlord subsequently completed and signed the move out condition inspection report without the tenant's involvement.

#### *Landlord's application*

The landlord claims the tenant left the rental unit unclean, requiring additional cleaning by the landlord. The tenant denies the landlord's claim testifying they cleaned the unit prior to moving and left it reasonably clean and ready for occupation. The landlord provided 8 photo images respecting parts of the unit in support of their claim for cleaning.

The landlord also claims the tenant left the unit with 7 light bulbs of incorrect wattage in the bathroom vanity and in pot lights. The tenant did not dispute this portion of the landlord's claim.

#### *Tenant's application*

The tenant seeks recovery of their security deposit, as well as compensation due to them pursuant to receiving a 2 Month Notice to End for Landlord's Use. The parties agreed the landlord received the tenant's forwarding address in writing on February 03, 2016.

## **Analysis**

On preponderance of the relevant evidence for this matter, I have reached a Decision.

*The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

### *Landlord's claim*

I find that the landlord's *right to make a claim against the security deposit* was extinguished because they did not comply with the requirements of **Section 23** (*Condition inspection – start of tenancy*). It remained available to the landlord to file a claim for damages. In this matter the landlord filed an application purporting to *other*, which I am prepared to accept pertains to damages.

I find the tenant acknowledged they did not replace light bulbs with the correct wattage upon leaving the unit. None the less, the landlord has not provided evidence of their cost for the light bulbs in support of their stated claim. As a result, I grant the landlord nominal compensation which I set at **\$35.00** for all light bulbs.

I find that the landlord's claim the rental unit was not left reasonably clean is arguable, however I accept that their photo images depict that certain parts of the rental unit were left insufficiently clean to be reasonably clean, as required by the Act. As a result, I accept the landlord is owed nominal compensation which I set at **\$25.00** for cleaning. As the landlord has been partly successful in their claim, I find they are further entitled to recovery of the filing fee for a total entitlement of **\$160.00**.

### *Tenant's claim*

I find that **Section 38(1)** of the Act provides as follows (**emphasis mine**)

**38(1)** Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a)            the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord may have filed their application within 15 days of receiving the tenant's forwarding address, however, having found the landlord's *right to make a claim against the security deposit* was extinguished because they did not comply with **Section 23** of the Act (*Condition inspection – start of tenancy*) the landlord was instead obligated to return the deposits within the required time to do so after the tenancy ended January 31, 2016. The landlord failed to repay the security deposit within 15 days of the tenancy ending and is therefore liable under **Section 38(6)** which states:

**38(6)** If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$350.00 and was obligated under Section 38 to return this amount. The amount which is doubled is the original amount of the deposit. As a result I find the tenant has established an entitlement of **\$700.00**.

I find that **Section 51** of the Act states as follows (*emphasis mine*).

**Tenant's compensation: section 49 notice**

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the **equivalent of one month's rent** payable under the tenancy agreement.

I find the undisputed evidence is that the tenant did not receive their due compensation pursuant to Section 49 and 51 of the Act. As a result, I grant the tenant the prescribed compensation in the amount equivalent to 1 month's payable rent of **\$789.25**.

As a result of all the above:

*Calculation for Monetary Order*

Tenant's entitlement	\$700.00
Tenant's entitlement	\$789.25
<i>Landlord's entitlement</i>	- \$160.00
<b>Monetary Award to tenant</b>	<b>\$1329.25</b>

**I grant** the tenant a Monetary Order under Section 67 of the Act for the sum of **\$1329.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**Conclusion**

The parties' respective applications, in relevant part, have been granted and offset.

**This Decision is final and binding on both parties.**

*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: September 27, 2016

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Residential Tenancy Branch