



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes            MNSD, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order for the return of the security deposit - Section 38;
2. A Monetary Order for compensation - Section 67;
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

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

Is the Tenant entitled to compensation for the loss of parking space?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed and relevant facts: The tenancy started on August 15, 2015 and ended on August 31, 2016. Rent of \$915.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$457.50 as a security deposit. The tenancy agreement provides that parking is included in the rent. On August 28, 2015 the Parties mutually conducted a move-in inspection with completed report copied to the Tenant. The Parties mutually agreed to conduct a move-out inspection on Saturday August 27, 2016 and the unit was fully inspected on that date. The Tenant did not agreed to any deductions for carpet cleaning at that time. The Tenant's forwarding address was provided to the Landlord prior to the end of the tenancy. The Landlord did not made an application to claim against the security

deposit, did not obtain the Tenant's agreement in writing for any deduction from the security deposit and only returned \$368.25 to the Tenant.

The Tenant claims return of double the security deposit. The Landlord states that since the Tenant was not finished cleaning the unit the Landlord offered the Tenant another opportunity to attend a move-out inspection. There is no dispute that the Tenant refused to attend another inspection.

The Tenant states that he lost use of his parking space from May 2, 2016 to the end of the tenancy and claims compensation of \$200.00. The Tenant states that he bases this amount on the cost of parking at the nearby university. The Landlord states that they provide covered parking to other tenants in the building at a rate of \$25.00 per month and the Landlord would agree to compensation of \$100.00.

#### Analysis

Section 35(1) of the Act provides that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. As the Parties mutually agreed to the inspection on August 27, 2016 and as the Landlord's evidence is that the full inspection was conducted on that date I find that the Parties inspected the unit on August 27, 2016 in accordance with the Act.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord did not make a claim against the security deposit and only returned a portion of the security deposit to the Tenant without the Tenant's written authorization to do so, I find that the Landlord must now pay the Tenant double the security deposit plus zero interest in the amount of **\$915.00**. As the Landlord has already returned **\$368.25** to the Tenant I deduct this amount leaving **\$546.75** owed to the Tenant.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Section 65 of the Act provides that if a landlord has not complied with the Act, the regulations or a tenancy agreement, an order may be made, inter alia, that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. Given the tenancy agreement that includes a parking space with the rent and based on the undisputed evidence that the Tenant was not provided with a parking space for approximately four months I find that the Tenant has substantiated a loss in the value of the tenancy. The Tenant is therefore entitled to compensation that reflects the value lost. As the neither Party provided any documentary evidence to support their evidence of usual costs for parking I find that the Tenant has substantiated **\$150.00** for its loss. I base this amount on the middle cost offered by each Party's oral evidence.

As the Tenant's application has met with substantial success, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$796.75**.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$796.75**. If necessary, this order may be filed in the Small Claims 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: May 24, 2017

---

Residential Tenancy Branch