



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES INC  
name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      MNDC MNSD FF

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

JD appeared as agent on behalf of the landlord in this hearing, and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

### **Issues(s) to be Decided**

Is the tenant entitled to monetary compensation for loss other money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to the return of their security deposit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### **Background and Evidence**

This month-to-month tenancy began on June 1, 2015, with monthly rent set at \$1629.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$800.00 at the beginning of the tenancy, and returned to the tenant \$43.75 when the tenancy ended on May 1, 2017. The tenant provided her forwarding address on May 1, 2017, which was confirmed by both parties in the hearing.

The tenant testified that she left the suite in reasonably clean condition, and she did not give permission for the landlord to retain \$756.25 of her security deposit.

The tenant applied for monetary compensation in the amount of \$1,194.00 as set out in the table below.

<b>Item</b>	<b>Amount</b>
Return of Remaining Security Damage Deposit (\$800.00 - \$43.75)	756.25
Compensation for Landlord's failure to return deposit	800.00
Filing Fee	100.00
Less Move Out Fee	-100.00
Less Cleaning & Carpet Cleaning	-362.25
<b>Total Monetary Order Requested</b>	<b>\$1,194.00</b>

The landlord testified that the tenant failed to leave the suite in satisfactory condition, and retained the \$756.25 in satisfaction of the repairs and move-out fee. The landlord testified in the hearing that the tenant had attended the move-out inspection, but left before the inspection was completed.

The tenant testified that she had attended the move-out inspection as required by the *Act*, and disputes the landlord's claims that she left, stating that the landlord had agreed that everything was in order, and later made changes to the inspection report. The tenant submitted a copy of the inspection report in her evidence.

### **Analysis**

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord

must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord had not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave sworn testimony that the landlord had not obtained her written authorization at the end of the tenancy to retain any portion of the tenant's security deposit. I find that the tenant had participated in the move-out inspection as required by the *Act*.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to the return of the remaining portion of her security deposit (\$756.25), as well as compensation equivalent to the deposit for the landlord's failure to comply with the *Act*.

The tenant agreed in the hearing that the landlord may retain \$100.00 for the move-out fee, and \$362.25 for the cleaning. Accordingly the tenant's monetary award may be reduced by these amounts.

As the tenant has been successful in his application, I find that the tenant is also entitled to recover the filing fee from the landlord.

### **Conclusion**

I issue a \$1,194.00 Monetary Order in the tenant's favour under the following terms which allows the tenant to recover the portion of the security deposit retained by the landlord, plus a monetary award equivalent to the value of the deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. The tenant is also entitled to recover the cost of the filing fee for this application. As the tenant agreed to the deductions for the move-out fee and cleaning, the tenant's monetary claim was reduced by \$462.25.

Item	Amount
Return of Remaining Security Damage	756.25

Deposit (\$800.00 - \$43.75)	
Compensation for Landlord's failure to return deposit	800.00
Filing Fee	100.00
Less Move Out Fee	-100.00
Less Cleaning & Carpet Cleaning	-362.25
<b>Total Monetary Order</b>	<b>\$1,194.00</b>

The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this 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: October 24, 2017

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Residential Tenancy Branch