



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNSD FF MNR MNDCL

### **Introduction**

Both parties made applications and attended the hearing and gave sworn testimony. The tenant provided evidence that they had served the landlord with the Application for Dispute Resolution by registered mail and personally with their forwarding address on April 30, 2018. The landlord gave evidence they had made their Application on June 14, 2018 and served their application by registered mail. Both parties agreed they had received them as stated. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38; and
- b) To recover the filing fee for this application.

The landlord applies pursuant to the Act for orders as follows:

- c) Compensation for one half of one month's rent pursuant to sections 45 and 67;
- d) Deductions for damages from the security deposit; and
- e) To recover the filing fee for their application.
- f)

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that they are entitled to the return of double the security deposit according to section 38 of the Act?

Is the landlord entitled to one half of one month's rent pursuant to sections 45 and 67 of the Act and to other damages?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The parties agreed to the following facts:

- a. The tenancy commenced September 1, 2016, a security deposit of \$475 and a pet damage deposit of \$475 were paid.
- b. Rent was \$950 a month.
- c. The tenant gave notice to end their tenancy on April 3, 2018 and vacated on April 30, 2018; they provided their forwarding address in writing on April 30, 2018.
- d. The landlord was able to re-rent the unit for May 15, 2018. The tenant contended he should have been able to rent it sooner but the landlord said some applicants were

unsuitable. He provided a copy of the new tenancy agreement as evidence of its commencement.

- e. Part of the tenant's deposit was returned in the amount of \$616.05. The tenants said they gave no permission to retain any of it.

A condition inspection move-in and move-out report is in evidence. The landlord pointed out that the tenant had signed it and it states she will have the carpets professionally cleaned at move-out. It is also in the lease addendum. The tenant said they had cleaned them recently and did not think they had to do them again.

The landlord claims as damages:

- 1. \$208.95 for professional carpet cleaning
- 2. \$25 for bulb replacement
- 3. \$100 for cleaning which he did himself.

The tenant does not agree with the deductions made by the landlord and requests their entire deposits refunded plus any right under section 38 of the Act to have it doubled.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

.

**Analysis:**

On preponderance of the relevant evidence for this matter;

**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 section 45 of the Act sets out when a tenancy ends:

*45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is **not earlier than one month after the date the landlord receives the notice**, and*

*(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

I find the tenant gave Notice on April 3, 2018 so the tenancy did not legally end until May 31, 2018. I find the landlord made an Application to claim against the deposit on June 14, 2018 so I find he may claim against the deposits and is not liable under section 38(6) (b) as he made his application within the 15 days allowed.

Damage Claim:

Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find the tenant violated the Act and tenancy agreement by giving inadequate notice to end the tenancy and by not professionally cleaning the carpets and leaving some items dirty.

Residential Policy Guideline 1 provides it is a tenant's responsibility to professionally clean the carpets, leave the unit clean and to provide light bulbs.

The landlord has submitted a claim for half a month's rental loss \$429.03 plus damages of \$333.95. Damages included professional carpet cleaning, electric light bulbs and cleaning. I find the landlord's claim substantiated with the move-out condition inspection report which notes floors are dirty and stained, light bulbs burned out in many rooms and the oven was left dirty. I find his receipts verify his costs. Therefore I find him entitled to \$333.95 for his costs.

Furthermore, I find he tried to mitigate his rental loss by re-renting as soon as possible. I find his evidence credible that several applicants were not suitable but he was able to re-rent for May 15, 2018. Although the tenant argued this point, I find the landlord's evidence credible as the new tenancy agreement in evidence supports his statements.

I find the landlord entitled to compensation of \$762.98 plus his filing fee. As he already returned \$616.05 to the tenant's this will be included in the calculation.

**Conclusion:**

I find the landlord entitled to a monetary order as calculated below and to recover the filing fee for this application. I dismiss the application of the tenant as they received more refund than entitled to. Their filing fee was waived.

One half of one month's rent	429.03
Carpet cleaning	208.95
Cleaning and Light bulbs	125.00
Filing fee	100.00
Less remainder deposits in trust(calculation below)	-333.95
<b>Total Compensation to Landlord</b>	<b>529.03</b>

**Calculation of Tenant's Deposits**

Original Deposit	950.00
<u>Less</u> amount returned by landlord	<u>-616.05</u>
Total Left in Trust to credit to amount owed	<u>333.95</u>

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: July 26, 2018

---

Residential Tenancy Branch