



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of double her security deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on December 29, 2010. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of this breach?

### Background and Evidence

I heard undisputed testimony that the parties entered into a month to month tenancy agreement effective May 15, 2010. Rent was payable on the first of each month in the amount of \$705. The Tenant paid \$352.00 on May 15, 2010 as the security deposit. The Tenant vacated the property November 27, 2010. A move-in inspection report was completed at the onset of the tenancy and a move-out inspection was completed November 27, 2010. The Tenant provided her forwarding address to the Landlord on November 27, 2010 when she listed it on the move-out inspection form.

The Tenant testified the last time she called the Landlord to request her security deposit was on December 22, 2010 when she was told it was in the mail. A few days later she received a portion of her security deposit late, when she received an envelope from the Landlord on December 23, 2010. The envelope was post marked December 17, 2010, as supported by her documentary evidence and included a cheque dated December 16, 2010 in the amount of \$262.00 and a statement from the Landlord showing a deduction of \$90.00 for rug cleaning.

The Tenant acknowledges she signed the tenancy agreement on May 30, 2010 which includes "The landlord agrees: d) The Tenant agrees and authorizes deduction of the balance due to the landlord from the security deposit to cover the cost of the following 1) Rugs being professionally cleaned. The Tenant stated her carpets were not professionally cleaned as the Landlord brought up her own steam cleaner to clean them when she was moving out.

The Landlord testified and confirmed she has not made application for dispute resolution to keep a portion of the security deposit and she does not have an Order from the *Residential Tenancy Branch* authorizing her to keep a portion of the security deposit. The Landlord stated she had the Tenant's written permission because she agreed to these terms in her tenancy agreement when she signed it at the beginning of the tenancy.

The Landlord confirmed she is not a professional carpet cleaner. However, her machine is not a home carpet cleaner it is a professional extractor machine. She does not agree with the Tenant on when the carpets were cleaned as she did not clean them until three days after the Tenant moved out.

### Analysis

All of the testimony and documentary evidence was carefully considered.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

Section 20 (e) of the *Act* provides that a landlord must not require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement. Therefore, in

this case the clause in the tenancy agreement under security deposit (d) which authorizes a deduction from the security deposit does not comply with Section 20 of the Act and is not valid.

The Landlord has admitted that she did not apply for dispute resolution to keep the security deposit and does not have an Order allowing her to keep the \$90.00.

The evidence supports that the Tenant provided the Landlords with her forwarding address on November 27, 2010 when she vacated the unit. As per section 44(1)(d) of the Act the tenancy ended November 27, 2010.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than December 12, 2010.

The Landlord made no application for dispute resolution and as per the post mark on the envelope did not return a portion of the security deposit until December 17, 2010.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit. I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double her security deposit plus interest.

The Tenant has succeeded with her application therefore I award recovery of the \$50.00 filing fee.

**Monetary Order** – I find that the Tenant is entitled to a monetary claim as follows:

Doubled Security deposit (2 x 352.00)	\$704.00
Interest owed on the Security Deposit of \$352.00 from May 15, 2010 to March 7, 2011	0.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$754.00</b>
LESS: Partial Payment received after the due date	<u>-262.00</u>
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$492.00</b>

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$492.00**. The order must be served on the respondent Landlord and is enforceable through the Provincial Court 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: March 07, 2011.

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Residential Tenancy Branch