



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in payment of those amounts.

The Landlord's agent said she served the Tenant on February 15, 2012 by registered mail with the Application and Notice of Hearing (the "hearing package"). According to the Canada Post online tracking system, the Tenant received this mail on February 16, 2012. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issue(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on February 1, 2011 and ended on or about February 1, 2012 when the Tenant moved out. Rent was \$900.00 per month. The Tenant paid a security deposit of \$450.00.

The Landlord's agent admitted that no specific arrangements were made with the Tenant to complete a move out inspection. The Landlord's agent said she bumped into the Tenant in the hallway on one occasion and advised her that she would need the keys by February 1, 2012 because new tenants would be moving in. Consequently, the Landlord completed the move out condition inspection report in the Tenant's absence. The move out condition inspection report is dated January 31, 2012, however the Landlord's agent claimed the inspection was actually done on February 1, 2012. The Report simply states on all pages "Dirty."

The Landlord's agent said the Landlord incurred expenses of \$165.00 to clean the rental unit and \$134.40 to repair two bi-fold closet doors. The Landlord's agent said the Tenant was also charged \$50.00 because she did not return her keys.

### Analysis

Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report in accordance with the Act and the Regulations, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. Section 35(2) of the Act says that a Landlord must offer a Tenant at least 2 opportunities to conduct a move out inspection. Section 17 of the Regulations says the last opportunity must be set out on a Final Notice to Schedule a Condition Inspection.

In failing to provide the Tenant with at least two opportunities to conduct a move out inspection, I find that the Landlord breached s. 35(2) of the Act. Consequently, I give the move out inspection report completed in the Tenant's absence little weight. As a further consequence, I find that the Landlord's right to make a claim against the security deposit for cleaning and repair expenses is extinguished. Accordingly, ***I Order the Landlord to return the Tenant's security deposit of \$450.00 to her immediately to the address for service used by the Landlord to serve its hearing package in this matter.*** If the Landlord fails to do so, the Tenant may apply for Dispute Resolution to recover double the amount of the security deposit upon providing evidence that she has given the Landlord her forwarding address in writing.

Section 37 of the Act says that at the end of the tenancy, the Tenant must leave the rental unit reasonably clean and undamaged and must return all keys to the Landlord. The Landlord claimed that the Tenant damaged 2 bi-fold closet doors, however the inspection report simply indicates in large letters "dirty" and no closet door damage is noted. Furthermore, the invoice for the alleged repairs is undated and does not identify the rental unit in question. I also note that the invoice for cleaning expenses has no details and is dated April 9, 2012 (or three months after the tenancy ended). In the circumstances, I find that there is insufficient evidence to conclude that the Tenant should be responsible for cleaning and repair expenses and those parts of the Landlord's application are dismissed without leave to reapply.

The Landlord's agent also claimed that the Landlord incurred expenses of \$50.00 because the Tenant did not return her keys however, the Landlord provided no evidence (such as an invoice or work order) in support of this claim but rather only an incomplete and unsigned "Move Out Charge Analysis." In the circumstances, I find that there is insufficient evidence to support this part of the Landlord's claim and it is also dismissed without leave to reapply.

Conclusion

The Landlord's application is dismissed in its entirety without leave to reapply. ***The Landlord is hereby Ordered to return the Tenant's security deposit of \$450.00 to her immediately to the address for service used by the Landlord to serve its hearing package in this matter.***

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: April 17, 2012.

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Residential Tenancy Branch