



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENACRE REALTY (PROPERTY MNGMT DIVISION)  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MNSD, MNDC, FF

### **Introduction**

The hearing was convened to deal with an application by the tenant for the return of double the security deposit under the Act. This Dispute Resolution hearing was also convened to deal with a cross application by the landlord seeking a monetary claim of for rent for August 2013, cleaning costs, carpet cleaning costs and reimbursement for the \$50.00 fee paid for the application.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence properly served, but only evidence that is relevant and material to the issues under dispute are described in this decision.

### **Issues to be Decided for the Tenant's Application**

Is the tenant entitled to double the security deposit under section 38 of the Act?

### **Issues to be Decided for the Landlord's Application**

Is the landlord entitled to compensation under section 67 of the *Act* for rent and cleaning?

### **Background and Evidence**

The tenancy began on October 1, 2012 with rent of \$1,500.00 due on the. A security deposit of \$750.00 was paid. On June 29, 2013, the landlord issued a Two Month Notice to End Tenancy for Landlord's Use effective September 30, 2013.

The landlord testified that the tenant failed to pay rent due on August 1, 2013 and the landlord is claiming \$1,500.00. The landlord testified that, when the tenant vacated, the rental unit was not left in a reasonably clean state. The landlord testified that the tenant

set a date and time to do the move-out condition inspection at the end of the tenancy, on August 31, 2013, but failed to attend.

According to the landlord, the tenant verbally told the landlord's agent that the tenant was leaving at the end of August 2013 and that the landlord had the tenant's permission to retain the tenant's \$750.00 security deposit.

The landlord testified that they incurred expenses of \$480.00 for cleaning and \$212.52 for carpet cleaning, which is being claimed. The landlord submitted copies of invoices confirming these expenditures.

The landlord testified that they had only received the tenant's written forwarding address when the tenant's application was served and this was the first time they became aware that the tenant had not kept his verbal commitment to allow the landlord to retain the security deposit as previously agreed.

The tenant denied that he failed to cooperate in a scheduled move out condition inspection.

The tenant testified that the landlord only gave the tenant a refund cheque for \$50.38 for their deposit, which the tenant declined to cash. The tenant testified that the landlord wrongfully retained the remainder of the \$750.00 security deposit. The tenant is seeking a refund of double the security deposit on the basis that the landlord failed to refund the deposit within 15 days.

With respect to the landlord's claim for the costs of cleaning, the tenant testified that the rental unit was left thoroughly cleaned at the end of their tenancy and, in fact, was left in a much better condition than when they moved into the unit. The tenant pointed out that the unit had numerous condition deficiencies when they moved into the unit, including that it was not reasonably clean.

The tenant feels that the landlord's claim should be dismissed.

**Analysis: Tenant's Application- Security Deposit**

Section 38(1) states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address a landlord must either:

- repay any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations OR
- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The landlord was in possession of the tenant's security deposit, held in trust on behalf of the tenant at the time that the tenancy ended.

Section 38(6) provides that, if a landlord does not act within the above deadline, the landlord; (a) may not make a claim against the security deposit or any pet damage deposit, and; (b) must pay the tenant double the amount of the security deposit. The tenant is claiming a refund of double the security deposit.

I find that the tenant's written forwarding address was provided when the tenant submitted his application for Dispute Resolution, served on the landlord by registered mail on October 22, 2013.

The Act provides that service by mail is deemed received five days after the mailing date, In this case that would fall on October 27, 2013. Therefore, I find that the landlord was required to either return the deposit, or, in the alternative, make an application for dispute resolution seeking to keep the deposit within the following 15 days. I find that the landlord's application for dispute resolution was made on November 7, 2013, and this was clearly within the fifteen-day deadline.

Based on the above, I find that the tenant is not entitled to receive double the \$750.00 security deposit paid, but is only entitled to be refunded or credited with \$750.00.

### **Analysis: Landlord's Application**

In regard to the landlord's claim for rent owed for the period from August 1, 2013 until August 31, 2013, I find that this rent is not owed because, the tenant was entitled to be credited or paid an amount that is the equivalent of one month's rent for the final month of the tenancy. I find that the final month of the tenancy was August 2013.

In regard to the tenant leaving earlier than the effective date of the landlord's 2 Month to End Tenancy, I find that the Act does permit a tenant to vacate earlier than the effective date of the Notice.

Section 50(1) of the Act states that, if a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] the tenant may end the tenancy even earlier than the effective date on the Notice by:

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
- (b) only paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, or, if the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the *tenant's* notice.

Section 50(3) of the Act states that a notice given by a tenant under this section does not affect the tenant's right to the one-month compensation under section 51 [*tenant's compensation: section 49 notice*].

Based on the above, I find that the landlord is not entitled to claim rent for September 2013 as the tenant had already vacated and was entitled to leave earlier than the effective date given on the landlord's 2-Month Notice.

With respect to the landlord's claim for damages and loss, for cleaning, I find that section 7 of the Act states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants the Arbitrator authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the monetary claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The landlord alleges that the tenant did not comply with section 37 of the Act, but the tenant disputes this.

To determine whether or not the tenant had complied with section 37 of the Act, I find that this can best be established through the submission of move-in and move-out condition inspection reports containing both party's signatures.

Section 21 of the Residential Tenancy Regulations states that, in dispute resolution proceedings, a condition inspection report completed in accordance with the Act and Regulation is evidence of the state of repair and condition of the rental unit on the date of the inspection.

Conducting move-in and move out condition inspection reports are a requirement of the Act under section 23(3) and section 35 of the Act and the Act places the obligation on the landlord to complete the condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, the landlord did not submit copies of the move-in and move-out condition inspection reports. I also find that no documentation is in evidence to show that the tenant was ever sent a written Final Notice to schedule a move out condition inspection, as required under the Act.

I find the failure to comply with the Act and the absence of the move-in and move-out condition inspection reports has hindered the landlord's ability to prove that the tenant should be held accountable for the costs of any cleaning or repairs claimed at the end of the tenancy.

Given the above, I find that the landlord's monetary claim for the cost of cleaning must therefore be dismissed.

I find that the tenant is entitled to be refunded the \$750.00 security deposit. Accordingly I hereby issue a monetary order in favour of the tenant for \$750.00. This order must be served on the landlord by registered mail or in person and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

**Conclusion**

The tenant is successful in the application and is issued a monetary order for a refund of double the security deposit. The landlord's application was dismissed in its entirety without leave.

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: January 27, 2014

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Residential Tenancy Branch

