



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDC, MND, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on October 17, 2014 for:

1. Return of double the security deposit – Section 38; and
2. A Monetary Order for compensation or loss - Section 67;

The Landlord applied on October 2, 2014 for:

1. A Monetary Order for damages to the unit – Section 67;
2. A Monetary Order for compensation – Section 67; and
3. An Order to retain the security deposit – Section 38.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

During the Hearing Landlord PH requested that her name be added as a Landlord to the application made by Landlord BF. Landlord PH confirmed that Landlord BF was authorized to act as her agent. As there is no prejudice to the Tenant in adding Landlord PH’s name to the Landlord’s application I amend the application to add this name.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

IS the Landlord entitled to the monetary amounts claimed?

Background and Evidence

Landlord BF states that the tenancy started around August 10, 2012 and ended on August 31, 2015. The Tenant states that the tenancy started on September 2, 2014 and ended on August 29, 2014 when the Tenant returned the keys to the unit. The Landlord provided no accounting records for the receipt of rents paid. There is no dispute that the rent of \$375.00 was payable monthly and that on January 13, 2014 the Tenant paid a security deposit of \$150.00. There is no dispute that no move-in or move-out inspection was conducted. The Tenant states that he requested an inspection at move-out but that it did not occur. Landlord BF states that the Tenant's forwarding address was received approximately in the middle of September 2014. The Tenant states that the forwarding address was mailed to the Landlord on September 10, 2014.

The Landlord states that the Tenant left the unit, made up of three rooms, dirty with grime on the walls, and leaving behind garbage and small un-working appliances. The Landlord states that the unit was cleaned by a third party who also rented and used a steam cleaner for the one carpet. The Landlord claims \$125.00 for cleaning the unit that the Landlord states took about 3 hours, \$50.00 for the cleaning of the carpet and \$35.00 for the removal of the small appliances. The Landlord states that no receipts were provided for the rented carpet cleaner and that the amount claimed for the removal of the appliances was for the cost of a vehicle. The Landlord also states that no vehicle was rented and that the amount claimed was paid to a third individual who had a vehicle. The Landlord did not provide any photos of the state of the unit at move-out.

The Tenant states that the unit was cleaned and wiped down, including the walls, at move-out and provided a witness letter in relation to the cleaning. The Tenant states

that the carpet was only vacuumed and that it did not otherwise require steam cleaning. The Tenant states that there were some damages present at move-in.

The Tenant states that his rents were paid directly to the Landlord from a third party agency a few days before the beginning of each month and that the Tenant forgot to inform the agency of his move resulting in the September 2014 rent cheque being sent to the Landlord at the end of August 2014. The Tenant states that this amount was not returned to the Tenant and the Tenant claims \$375.00. The Tenant also claims return of double the security deposit. The Landlord states that the Tenant was behind in rent and that the rent cheques that were received near the end of the month were used for the preceding month resulting in the cheque that was received on August 28, 2014 being taken for August 2014 rent. As noted earlier, the Landlord provided no accounting records. The Tenant states that he caught up on the late rent that the Landlord was referring to by paying the Landlord cash for the shortfall and that despite asking for a receipt was not given one.

### Analysis

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 24(2) of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. As no move-in inspection was completed I find that the Landlord's right to claim against the security deposit for damages to the unit was extinguished.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. As the Landlord's right to claim against the security deposit for damages to the unit was extinguished and given that no other claim

was made, I find that the Landlord was required to return the security deposit within 15 days of the receipt of the forwarding address. Considering the Tenant's evidence of when the forwarding address was sent and the Landlord's vague evidence as to when it was received, I find on a balance of probabilities that even if the Landlord had a right to otherwise claim against the security deposit, the Landlord failed to make the application within 15 days receipt of the forwarding address and is therefore required to pay the Tenant **\$300.00** as double the security deposit plus zero interest.

Section 7 of the Act provides that where a tenant or landlord does not comply with the Act, regulation or tenancy agreement, the tenant or landlord must compensate the other party for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary.

Given the lack of a move-in or move-out condition report, photos, or invoices, I find that the Landlord has failed to provide sufficient evidence to establish on a balance of probabilities that the Tenant caused the damages claimed or that costs for the damages being claimed were incurred. I therefore dismiss the Landlord's claims for damages to the unit. Given the lack of accounting records from the Landlord and considering the copies of the rent cheques provided by the Tenant as evidence, I find on a balance of probabilities that the Tenant has substantiated that the Landlord retained a month of rent without right and that the Tenant is therefore entitled to **\$375.00**.

As the Landlord's claims have not met with success I decline to award recovery of the filing fee and in effect the application is dismissed. As Landlord PH is the only Party named by the Tenant, I make the order payable by this Landlord.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$675.00**. If necessary, this order may be filed in the Small Claims 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: June 1, 2015

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Residential Tenancy Branch

