



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with the tenant's application for a Monetary Order for return of double the security deposit and damage or loss under the Act, regulations or tenancy agreement. The landlord did not appear at the hearing. The tenant testified that she sent the hearing documents to the landlord via registered mail on February 10, 2016 and the landlord refused to accept the registered mail. As proof, the tenant provided a copy of the registered mail envelope that was sent to the landlord and returned to sender by Canada Post. Section 90 of the Act deems a person to have received documents five days after mailing even if the recipient refuses to accept the mail. Accordingly, I deemed the landlord to be served with notification of this proceeding and I continued to hear from the tenant without the landlord present.

### Issue(s) to be Decided

1. Is the tenant entitled to return of a portion of rent paid for January 2016?
2. Is the tenant entitled to compensation for cleaning the rental unit?
3. Is the tenant entitled to return of double the security deposit?

### Background and Evidence

The tenant submitted that the fixed term tenancy commenced October 1, 2015 and was set to expire on September 30, 2016. The tenant paid a security deposit of \$425.00 and was required to pay rent of \$850.00 on the first day of every month.

The tenant's claims against the landlord are comprised of three parts. Below, I describe the three parts to her claim:

### **Return of rent paid (unlawful eviction)**

The tenant submitted that on December 3, 2015 she received a letter taped to her door from the landlord advising the tenant that she had one month to move out. The tenant did not move out since the landlord had not given her a valid notice to end tenancy. The landlord also cashed the tenant's January 2016 rent cheque in the full amount. On January 10, 2016 the landlord's mother told the tenant she had to move out because the unit was re-rented as of January 15, 2016. On January 18, 2016 the tenant returned to the rental unit to find the locks to the rental unit had been changed despite the fact she still had a few items left in the unit. The tenant seeks return of rent for the period of January 18, 2016 through January 31, 2016 in the amount of \$356.33 for the unlawful eviction.

### **Cleaning**

The tenant also seeks compensation of \$900.00 because the rental unit was not clean at the start of the tenancy. The tenant stated that she brought the condition of the rental unit to the landlord's attention and the landlord responded by saying they would work something out and that the former tenant was a male and implied that men are dirty. The tenant also claimed that the landlord responded by stating that if she did not like it she should move. The tenant submitted that she hired a cleaner for six hours at \$25.00 per hour and then performed more than 30 hours of cleaning herself. The tenant is seeking to be reimbursed \$150.00 she paid to the cleaner and \$750.00 for her own time at \$25.00 per hour. When asked to describe the rental unit at the start of the tenancy the tenant stated that nothing had been cleaned, including: food and grease in the cupboards, urine around the toilet, a dirty shower; and, sticky floors.

### **Double security deposit**

With respect to the security deposit, the tenant submitted that on January 18, 2016 a friend of hers personally delivered to the landlord a written notice containing the tenant's forwarding address while the tenant waited in the car. The tenant testified that she did not authorize the landlord to make any deductions from the security deposit and the landlord had not completed condition inspection reports. Further the landlord did not refund the security deposit or make an Application to claim against it. Accordingly, the tenant seeks return of double the security deposit.

Documentary evidence provided by the tenant included: a written summary of claims; the front and back side of the January 1, 2016 rent cheque that was cashed; a receipt for the cleaning lady; the written notice containing the tenant's forwarding address; an Affidavit of Service signed by the person who delivered the forwarding address to the landlord; and, the registered mail envelope that contained the hearing documents.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

#### **Return of rent paid (unlawful eviction)**

Section 44 of the Act provides for ways a tenancy ends. In order for a landlord to end a tenancy the landlord must serve the tenant with a Notice to End Tenancy in one of the approved forms. The tenant asserted the landlord served her with an invalid notice. In the absence of a valid Notice to End Tenancy and considering the fact the landlord cashed the tenant's rent cheque for January 2016 I accept the tenant's position that the landlord unlawfully evicted her by restricting her entry on January 18, 2016. Therefore, I grant the tenant's request to recover \$356.33 from the landlord, calculated as the pro-rated rent for the period of January 18 – 31, 2016.

#### **Cleaning**

At the start of the tenancy, a landlord is expected to provide the tenant with a rental unit that is reasonably clean. I accept the tenant's unopposed submission that the rental unit was not reasonably clean at the start of the tenancy; however, I find her claim for \$900.00 in compensation to be excessive when I consider that the claim exceeds a full month's rent. Nor, did the tenant provide a detailed list or diary of cleaning tasks performed and the time to perform the tasks. Rather, the tenant provided a limited list of items that required cleaning during the hearing and I am of the view that these items could have been cleaned in the six hours that the cleaner was present. I find the receipt for \$150.00 satisfies me that the tenant suffered a loss in this amount and I grant the tenant compensation of \$150.00 for cleaning. The remainder of the tenant's claim for cleaning is dismissed.

#### **Double security deposit**

Section 38(1) of the Act provides that a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15

days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. The only exception to this requirement is where the landlord has a legal right under the Act to make deductions or retain the security deposit and I was presented no evidence to suggest the landlord had the legal right to make deductions from the security deposit.

If a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

In this case, I was not provided any information to suggest the tenant extinguished her right to return of the security deposit. Rather, it would appear that the landlord extinguished her right to make a claim against the security deposit by failing to complete a move-in inspection report. Further, the tenant did not authorize the landlord to retain the security deposit in writing.

Based upon the undisputed evidence before me, I am satisfied the landlord received the tenant's forwarding address in writing on January 18, 2016 based upon the Affidavit of Service signed by the person who delivered it to the landlord.

I find the landlord was obligated to comply with section 38(1) of the Act by either refunding the entire security deposit to the tenant or filing another Application for Dispute Resolution within 15 days of January 18, 2016 and since the landlord did neither I find the tenant entitled to return of double the security deposit. Therefore, I award the tenant \$850.00 for return of double the security deposit.

### **Filing fee and Monetary Order**

Given the tenant was largely successful in her application; I further award the tenant recovery of the \$100.00 she paid for this application.

Based upon all of the above awards, I provide the tenant with a Monetary Order for the sum calculated as follows:

Return of rent for January 18 – 31, 2016	\$ 356.33
Cleaning	150.00
Double security deposit	850.00
Filing fee	<u>100.00</u>
Monetary Order	\$1,456.33

To enforce the Monetary Order it must be served upon the landlord and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$1,456.33 to serve and enforce upon the landlord.

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 10, 2016

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Residential Tenancy Branch