

DECISION AND REASONS

TENANT APPLICATION

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

1. Monetary Order for money for compensation for damage or loss under the Act, regulation or tenancy agreement.

TOTAL AMOUNT OF MONEY CLAIMED IS: \$610.00 plus filing fees

SERVICE

I accept that the landlord was properly served with the Application for Dispute Resolution hearing package.

CONDUCT OF THE HEARING

Both parties were given a full opportunity to be heard, to present evidence and to make submissions. Neither party requested an adjournment or a Summons to Testify.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

SUBMISSIONS

The tenant testified that she vacated the premises on November 12, 2008 and provided her forwarding address in writing to the landlord on that date. The tenant testified that her security deposit has not been returned to her by the landlord.

The landlord testified that she received the tenant's written forwarding address on November 19, 2008. The landlord says that she refused to return the deposit to the tenant because it was paid by the Ministry of Social Services. The landlord says the landlord therefore returned the deposit to the Ministry of Social Services on December 1, 2008. The landlord submitted her cheque and a receipt issued by that Ministry as proof of payment.

The tenant testified that the Ministry did pay the deposit on her behalf at the start of the tenancy, however, she was required to repay the deposit to the Ministry at the rate of \$20.00 per month. The tenant submitted a copy of the agreement between herself and the Ministry in this regard. The tenant testified that she did discover from the Ministry that the landlord repaid the deposit to them but the Ministry has advised they cannot reverse the payment or refund it themselves to the tenant.

The landlord said it is up to the tenant to contact the Ministry of Social Services. The landlord testified that she is not responsible for repaying this sum to the tenant.

FINDINGS

Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit **to the tenant** with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(emphasis added)

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

The evidence is that the landlord did not make application to claim the deposit and she refused to repay the deposit to the tenant opting instead to repay it to the Ministry of Social Services. However, the Act is clear that when a deposit is to be repaid, it must be repaid to the tenant. I therefore find that in not returning the deposit to the tenant within 15 days of receipt of the tenant's forwarding address, the tenant is entitled to the recovery of double the security deposit.

Total monetary award payable by the landlord to the tenant:

Security Deposit paid on August 24, 2008	\$305.00
Double Security Deposit	305.00
Interest on original amount paid from date security deposit paid to date of this order	1.62
TOTAL MONETARY AWARD	\$611.62

The tenant has been provided with a formal Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with the Order, the Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.