

## **DECISION**

Dispute Codes      MNDC MNSD OLC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to obtain a Monetary Order to recover double the security deposit, for money owed or compensation for damage or loss under the *Act*, to order the landlord to comply with the *Act*, and to recover the filing fee for this application from the landlord.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on March 25, 2009. Mail receipt numbers were provided in the tenant's evidence. The landlord was deemed to be served the hearing documents on March 30, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the landlord and tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is entitled to a Monetary Order under section 38 of the *Act* for double the security deposit
- Whether the tenant is entitled to a Monetary Claim under section 67 of the *Act* for compensation for damage or loss under the *Act*
- Whether the tenant is entitled to recovery of the filing fee for this application from the landlord under section 72 of the *Act*

Background and Evidence

The tenancy began on May 1, 1997 between the landlord and the current tenant's male friend. During the month of January 2005 the current tenant began to move into the rental unit and continued the tenancy, under an assignment of tenancy from the male friend to the tenant, which was verbally agreed upon by the landlord. The tenancy ended January 10, 2009 when the tenant vacated the rental unit.

The tenant testified that the male tenant paid \$400.00 on May 1, 1997 for a security deposit and was not refunded his security deposit as the tenancy was continuing with the female tenant occupying the rental unit.

Both the male and female landlord testified that the security deposit has been held in trust since May 1, 1997 for the above mentioned tenancy.

The tenant testified that she advised the landlord in a letter dated January 12, 2009, that her mailing address had not changed, that her address remained at the same box number that she has always used, and still uses today.

The tenant provided documentary evidence in the form of a letter written by the landlord, February 23, 2009, which outlines deductions made by the landlord against the tenant's security deposit.

The landlord testified that he had written the February 23, 2009 letter and that he had issued a payment of \$70.62 to the tenant for a partial refund of her security deposit. The landlord testified that he has not made an application for dispute resolution to apply to keep the security deposit or for damages or loss to be offset by the security deposit.

The tenant is applying to have the security deposit doubled and refunded with interest.

The tenant is claiming \$200.00 for damage or loss suffered when the landlord removed the service of snow removal. The tenant testified that someone had piled snow in her driveway which prevented her ability to drive through. The tenant provided pictures in her evidence of snow in the driveway of the rental unit. The tenant claimed that she was forced to hand shovel the pile of snow, over several days, and wishes to be reimbursed for this inconvenience.

The landlords testified that they have never provided snow removal in the past. The landlords testified that they were out of town during the time the tenant is alleging that the snow was piled up in her driveway.

The tenant is requesting to recover the cost of the filing fee from the landlord for this application.

### Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant tenant would be required to prove that the landlord did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the tenant, bears the burden of proof and the evidence furnished by the Applicant tenant 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 loss or to rectify the damage

4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

In regards to the tenant's right to claim damages from the landlord, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

With respect to the tenant's claim of \$200.00 for snow removal, I find that the tenant has failed to prove that snow removal was the responsibility of the landlord as part of her tenancy agreement and that the landlord was responsible for piling the snow, or ordering the snow to be piled, at the end/entrance of her driveway. Based on the aforementioned I find that the tenant has failed to prove the above mentioned test for damage or loss and hereby dismiss her claim of \$200.00 without leave to reapply.

The landlord testified that the security deposit has been held, for this tenancy, since May 1, 1997, that the landlord refunded only a portion of the security deposit, holding onto the balance, without the landlord applying for and receiving an Order from the *Residential Tenancy Branch* authorizing him to do so, and without the tenant's written permission to do so. Section 38 of the *Act* stipulates that if after 15 days from the later of the end of the tenancy or receipt of the tenant's forwarding address, if the landlord fails to make application to the *Residential Tenancy Branch* against the security deposit, then the landlord must pay the tenant double the amount of the security deposit. Based on the above, I find that the test for damages has been met the I find in favor of the tenants claim for double the security deposit plus interest.

As the tenant is partially successful in her claim, I hereby approve her request to recover the filing fee from the landlord.

**Monetary Order** – I find that the tenant is entitled to a monetary claim and that the tenant is entitled to recover the filing fee from the landlord as follows:

Interest of \$400.00 Security Deposit from May 1, 1997	\$52.40
Double the Security Deposit \$400.00 x 2	800.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	<b>\$902.40</b>
Less Landlord's cheque # 3594 issued to Tenant Feb. 23, 2009	- 70.62
<b>TOTAL OFF-SET AMOUNT DUE TO THE TENANT</b>	<b>\$831.78</b>

In regards to the landlord's claims and evidence relating to "My Compensation Costs", I am not able to hear or consider the landlord's claim during these proceedings as this hearing was convened solely to deal with the tenant's application. That being said, I must point out that the landlord is at liberty to make their claims in a separate application and to resubmit their evidence if the landlord wants to pursue requesting monetary compensation for damages or loss under Section 67 of the *Act*.

### Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for \$831.78. The Order must be served on the respondent landlord and is enforceable through the Provincial Court 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: May 27, 2009.

---

Dispute Resolution Officer