

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of his security deposit, compensation for having to move out of the rental unit so the Landlord's family member could occupy the unit, and to recover the cost of the filing fee 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 April 29, 2009. Mail receipt numbers were provided in the Tenant's evidence. The Landlord was deemed to be served the hearing documents on May 04, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the Landlord and Tenant appeared, 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

Is the Tenant entitled to a Monetary Order under Sections 38, 51, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The verbal month to month tenancy agreement began on June 15, 2007 and ended on March 31, 2009. Rent was payable on the 15<sup>th</sup> of each month in the amount of \$680.00 and the Tenant paid a security deposit of \$340.00 on June 15, 2007. The Landlord did not complete a move-in or a move-out inspection report. These facts are not in dispute.

The Landlord issued the Tenant three months written notice to end the tenancy because the Landlord's family member was going to occupy the rental unit.

The Tenant has claimed \$453.00 as compensation for having to move out of the rental unit so the Landlord's family member could occupy the unit.

The Landlord argued that the Tenant did not pay rent for March 2009 and that this was his compensation for issuing the notice to end tenancy.

The Tenant confirmed that he did not pay March 2009 rent.

The Tenant has requested the return of his security deposit. The Tenant provided documentary evidence which states that the tenant provided the Landlord with a forwarding address in writing which was sent to the Landlord on April 8, 2009 via registered mail.

The Landlord testified that she has not returned the Tenant's security deposit because there was damage to the rental unit. The Landlord advised that she has not applied for dispute resolution to obtain an order to retain the security deposit. The Landlord argued that the Tenant was not to keep pets in the rental unit and that they found out that he was keeping a rabbit or hamster in a cage in the rental unit.

Both the Tenant and the Landlord confirmed their mailing addresses.

### Analysis

I find that in order to justify payment of damage or loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant tenant pursuant to section 7.

Compensation for Landlord's Use of Property – Section 51 states that a Tenant is entitled to compensation for notice to end tenancy given by a Landlord under section 49

of the Act that is equal to one month's rent payable and that a Tenant may chose to withhold the amount from the last month's rent and that the rent is deemed to have been paid to the Landlord. In this case the Tenant chose not to pay his last month of rent of March 2009 and has received the 1 month's compensation for the Landlord ending the tenancy agreement for Landlord's use. Based on the aforementioned I hereby dismiss the Tenant's claim for \$453.00 compensation without leave to reapply.

Refund Security Deposit – The evidence supports the Tenant's testimony that he has provided the Landlord his forwarding address in writing and that he has requested his security deposit from the Landlord.

The Landlord has admitted to not returning the security deposit and interest because the rental unit was damaged. The Landlord confirmed that she did not apply for dispute resolution to retain the security deposit.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet deposit to the tenant with interest or make application for dispute resolution claiming against the security deposit or pet damage.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the amount of the security and pet deposit. I hereby approve the Tenant's claim for the return of double the security deposit plus interest.

In regards to the Landlord's claims relating to the condition of the rental unit at the end of the tenancy, I am not able to neither hear nor 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 if the Landlord wants to pursue their claim.

Recovery of the filing fee The Tenant has succeeded at large and I find that he should recover the \$50.00 cost of the filing fee from the Landlord.

**Monetary Order** – I find that the Tenant is entitled to a monetary claim as follows:

|  |                 |
|--|-----------------|
| Doubled Security Deposit 2 x \$340.00  | \$680.00        |
| Interest owed on the Security Deposit of \$340.00 from June 15, 2007 to August 4, 2009 | 7.93            |
| Recover Cost of Filing Fee   | 50.00           |
| <b>TOTAL AMOUNT DUE TO THE TENANT</b>  | <b>\$737.93</b> |

### 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 \$737.93. The order must be served on the respondent Landlords 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: August 04, 2009.

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Dispute Resolution Officer