

## **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 her security deposit and to recover the cost of the filing fee from the Landlord for this application.

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 May 21, 2009. Mail receipt numbers were provided in the Tenant's documentary evidence. The Landlord was deemed to be served the hearing documents on May 26, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Tenant appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

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 67 and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The Tenant testified that her tenancy began on July 1, 2008 but that the Landlord allowed her to move in a few days earlier. The Tenant stated that she paid \$475.00 as a security deposit on approximately June 15, 2008.

The Tenant stated that she requested a written tenancy agreement from the Landlord but that the Landlord kept putting her off and never provided her with an agreement to sign.

The Tenant confirmed that she did not provide the *Residential Tenancy Branch* with documentary evidence to support her claims that she had a tenancy agreement, that she paid rent for approximately ten months to the Landlord, or that she paid a security deposit to the Landlord.

### Analysis

A “**tenancy agreement**” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. I find that based on the above definition, oral terms contained in, or form part of, tenancy agreements and may still be recognized and enforced.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms can not be enforced. However when one of the parties is absent or disagrees with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

I find that in order to justify payment of 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 pursuant to section 7. It is important to note that in a claim for loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

I find that in the absence of documentary evidence to support the Tenant's testimony the Tenant has failed to prove the merits of her claim and I hereby dismiss the Tenant's claim with leave to reapply.

The Tenant has not been successful with her claim and is not entitled to recover the cost of the filing fee from the Landlord.

Conclusion

**I HEREBY DISMISS** the Tenant's claim, with leave to reapply.

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 27, 2009.

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Dispute Resolution Officer