



# Dispute Resolution Services

Residential Tenancy Branch

Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This hearing was convened in response to an application by the tenant for a monetary order for an amount of the security deposit and for compensation under section 38 of the Residential Tenancy Act for double the owed security deposit. The application is also inclusive of a request for recovery of the filing fee. Both, the tenant and the landlord were represented in the hearing and each participated in the hearing with their testimony and submissions respecting the application.

### **Issue(s) to be Decided**

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The undisputed facts before me are as follows: The tenancy began on April 01, 2008 and ended on June 30, 2009. The landlord collected a security deposit of \$350 at the outset of the tenancy. There was no start of tenancy inspection recorded, and there was no end of tenancy inspection recorded, although the landlord and tenant performed an inspection of the rental unit on July 05, 2009. At that time the landlord determined there was damage to a trim of a window and some holes in the walls of the hallway and some scratching of the floors and determined to set the damages in the total amount of only \$250. The tenant disputes the amount and testified that in her determination her responsibility is for only \$50. Regardless, the landlord proceeded to deduct an amount for the purported damages and forwarded a balance of \$100 to the tenant.

The tenant's testimony is that on July 06, 2009 she placed her forwarding address in writing in the landlord's mailbox to facilitate the return of the security deposit. The tenant provided a witness statement describing the tenant's delivery of their forwarding address to the landlord. The landlord testified that he did not receive the tenant's forwarding address as described by the tenant.

### **Analysis**

I prefer the tenant's testimony and accept that the landlord received and was in possession of the tenant's forwarding address in writing and request for the return of the security deposit by July 06, 2009.

**Section 38(1)** of the Act provides as follows:

- 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
  - 38(1)(a) the date the tenancy ends, and
  - 38(1)(b) the date the landlord receives the tenant's forwarding address in writing,
 the landlord must do one of the following:
  - 38(1)(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;
  - 38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

In this case, the landlord determined to hold a portion of the security deposit without the tenant's agreement, and forward the tenant the balance of \$100. The landlord testified that the amount he withheld was to pay for damage to the unit which at the time was disputed by the tenant and to which there was no resolution. In today's hearing the tenant thought differently and testified that on current thinking of the circumstances the landlord was likely entitled to withhold the amount of \$50 – and my decision will so reflect.

On the preponderance of the evidence and on the balance of probabilities I find that in the absence of the tenant's consent to a deduction of the security deposit, and in the absence of a move out inspection record, the landlord failed to repay the entire security deposit with interest, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing if he thought the tenant was not entitled to the full return of the security deposit and interest of \$353.94, and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, as to the tenant's monetary claim, the landlord currently still holds some of the security deposit in the amount of \$253.95, inclusive of accrued interest of 3.94, which he was obligated under section 38 to return to the tenant. The tenant has agreed the landlord was entitled to retain \$50. Therefore, I find the tenant has established a claim for the owed portion of the security deposit in the amount of **\$200**, accrued interest of **\$3.94**, and double the unpaid and owed portion of the root security deposit in the amount of **\$200**. I also find the tenant is entitled to recovery of the filing fee in the amount of **\$50**, for a total of **\$453.94**

### **Conclusion**

The tenant is given an Order under section 67 for the sum of **\$453.94**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated November 17, 2009.