

## **DECISION AND REASONS**

**Dispute Codes:** MNSD, FF

### **Introduction**

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit and the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issue to be Decided**

Is the tenant entitled to the return of double the security deposit? Is the tenant entitled to the recovery of the filing fee?

### **Background and Evidence**

The tenancy started on June 01, 2005. Prior to moving in the tenant paid a security deposit of \$600.00. The monthly rent was \$1300.00 due on the first of each month.

At the end of April 2009, the tenant gave verbal notice to end the tenancy effective May 31, 2009. On June 28, 2009, the tenant provided the landlord with his forwarding address in writing.

Shortly after receiving the tenant's forwarding address, the landlord mailed the tenant a cheque in the amount of \$63.10 along with a note of explanation regarding the amount (\$536.90) that she retained from the security deposit. The tenant did not agree with the deduction and filed an application for dispute resolution.

The landlord has filed evidence by way of photographs to depict the condition of the suite, invoices for the cost of repairs and a list of expenses that she incurred in addition to what she retained from the security deposit. In any case, even if proven to be true, the landlord's monetary claim was not a relevant consideration in determining an application under section 38 on a tenant's application.

The landlord will need to make her own application to address her monetary claim. In fact, the tenant's right to the return of the security deposit under section 38 has to be enforced regardless of what other factors exist.

The tenant agreed to pay \$60.00 for the cleaning of the stove and also agreed to accept

the balance of the security deposit instead of double the base amount.

### **Analysis**

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address.

The landlord currently holds a security deposit of \$600.00 and is obligated under section 38 to return this amount along with the accrued interest of \$21.25. The tenant has agreed to a deduction of \$60.00 for cleaning and has already received \$63.10 from the landlord. Therefore the tenant has established a claim of \$498.15. Since the tenant has proven his case, he is also entitled to the recovery of the filing fee of \$50.00.

### **Conclusion**

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for **\$548.15**, which represents the balance of the security deposit, the accrued interest and the filing fee. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated November 10, 2009.

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Dispute Resolution Officer