

## **Decision**

### **Dispute Codes:**

MNSD       Monetary Order for the Return of the Security Deposit and Pet Damage Deposit

FF       Recover the Filing Fee for this Application from the Respondent

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit and the pet damage deposit retained by the landlord.

Although served by registered mail sent on October 2, 2009, the landlord did not appear.

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

The tenant was seeking to receive a monetary order for the return of the security deposit of \$750.00 paid at the start of the tenancy on July 15, 2008.

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

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
  - Did the tenant pay a security deposit and pet damage deposit?
  - Did the tenant furnish a forwarding address in writing to the landlord?

- Did the tenant provide written consent to the landlord permitting the landlord to retain the security deposit at the end of the tenancy?
- Was an order issued permitting the landlord to retain the deposit?

The burden of proof is on the applicant.

### **Background and Evidence**

The tenant testified that the tenant had moved into the unit on July 15, 2008 and paid a security deposit of half a months rent in the amount of \$750.00 and moved out of the unit on March 31, 2009. The tenant testified that the forwarding address was given to the landlord at the end of the tenancy and also sent by registered mail on September 8, 2009, but that the landlord has not returned the deposit, nor has the landlord made application to retain the deposit. The tenant submitted copies of the registered mail tracking slip into evidence. The tenant is requesting the return of the deposit wrongfully retained by the landlord.

### **Analysis**

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, after the end of the tenancy, the director orders that the landlord may retain the amount.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposits.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the tenant's security deposit with interest was \$755.23 and that under the Act the tenant is entitled to \$1,555.23. This represents \$1,500.00 for double the deposit, plus \$5.23 interest on the original deposit and the \$50.00 fee paid by the tenant for this application.

### **Conclusion**

I hereby issue a monetary order to the tenant in the amount of \$1,555.23. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

January 2010

Date of Decision

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Dispute Resolution Officer