

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of the security deposit.

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 January 12, 2010. Mail receipt numbers were provided in the Tenant's evidence. The Landlord confirmed receipt of the hearing package.

Both the Landlord and Tenant appeared via telephone conference, acknowledged receipt of evidence submitted, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order for the return of her security deposit under section 38 of the *Residential Tenancy Act*?

### Background and Evidence

The undisputed testimony was the Tenant and her daughter entered into a fixed term tenancy beginning on March 1, 2008 which expired on March 1, 2009 with rent payable on the first of each month in the amount of \$2,000.00 and a security deposit of \$1,000.00 was paid to the Landlord on March 1, 2008. The Tenant's daughter then entered into a second tenancy agreement which began on March 1, 2009 for rent payable on the first of each month in the amount of \$2,000.00. The original security deposit was retained by the Landlord and a second deposit was not collected by the Landlord on March 1, 2009.

The tenancy ended when the Tenants vacated the rental unit on February 2, 2009.

The Tenant's daughter testified and confirmed that the original security deposit was paid by her Mother and should be returned to her mother, the applicant for this dispute. The daughter argued that she has never lived in the rental unit and that she entered into the tenancy agreements with the Landlord so that she could act as an agent for both the Landlord and her mother when signing documents for social assistance. The daughter confirmed that her mother lived in the rental house and rented out rooms to other tenants who were in receipt of social assistance.

The Landlord argued that she did not receive the Tenant's request for return of the security deposit until she received the hearing package and the Tenant has since vacated the rental unit and did not provide the Landlord with her new address.

The Tenant testified and confirmed that she had not provided the Landlord with her forwarding address as she has now moved in with her daughter. The Tenant provided her new address in her testimony during today's hearing.

The Landlord confirmed that she has not returned the security deposit and argued that there are damages caused to the rental unit.

### Analysis

All of the testimony and documentary evidence was carefully considered.

The Tenant has applied for the return of the security deposit; however the Tenant has not met the burden of proving that she gave the landlord(s) a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for dispute resolution.

The burden of proving a claim lies with the person making the claim and when it is just that person's word against the word of the other, that burden of proof is not met. The

applicant claims that she provided the Landlord a letter dated January 4, 2010 requesting the security deposit; however the landlord denies ever receiving this letter from the Tenant prior to the Tenant serving the Landlord with notice of dispute resolution.

Therefore in the presence of contradictory testimony on when the Tenant's forwarding address was given to the landlord, it is my finding that, at the time that the Tenant applied for dispute resolution, the Landlord was under no obligation to return the security deposit and therefore this application is premature. I therefore dismiss this claim with leave to re-apply.

At the hearing the Tenant testified what her forwarding address was, which is listed on the cover page of this written decision; therefore the Landlord is now considered to have received the forwarding address in writing as of today's date of February 18, 2010. The Landlord is therefore required to administer the Tenant's security deposit, currently held in trust by the Landlord, in accordance with section 38 of the Act as noted below:

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(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; or

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Conclusion

I HEREBY DISMISS the Tenant's application, 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: February 18, 2010.

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Dispute Resolution Officer