

## **DECISION**

**Dispute Codes**      MNSD

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

1. Monetary order for return of pet damage or security deposit pursuant to Section 38; and
2. Recovery of the filing fee paid for this application pursuant to Section 67.

Both parties appeared and I am satisfied that the landlord was properly deemed served with the Application for Dispute Resolution hearing package.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

### **Summary of Background and Evidence**

The tenant testified that she paid a security deposit of \$750.00 on August 1, 2008. The tenant testified that she vacated the premises on September 30, 2009 and provided her forwarding address to the landlord on October 1, 2009. The landlord acknowledges receiving the address on October 1, 2009. The tenant testified that she did agree to some deductions being made to the deposit however she did not receive the balance that remained owed to her until November 10, 2009 when she received a cheque for \$487.20. The landlord testified that he mailed a cheque to the tenant on November 5, 2009 in the sum of \$487.20 which included interest.

### **Analysis**

Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives a tenants' forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. The evidence shows that while the tenant did agree to some deductions being taken from her deposit the balance owing was not returned until after the 15 day period.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)).

Based on the undisputed evidence of the tenant I find that the landlord has not complied with Section 38 of the Act and the tenant is therefore entitled to a monetary order. The evidence shows that while the tenant initially paid a \$750.00 deposit, \$487.20 of that deposit was returned to her therefore the deposit held on account of this tenant was \$262.80. I will therefore double this sum as award no interest finding that has been paid.

Having been successful in this application, I also find that the tenant is entitled recover the \$50.00 filing fee paid for this application.

Calculation of monetary award payable by the landlord to the tenant:

Double Security Deposit	\$525.60
Filing Fees	50.00
<b>TOTAL MONETARY AWARD</b>	<b>\$575.60</b>

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.