

## **DECISION**

Dispute Codes            MNDC, MNSD

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and for the return of double the security deposit.

The tenant served the landlord by registered mail on October 30, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the tenant entitled to money owed or compensation under the Act for double her security deposit?
- Is the tenant entitled to recover her security deposit?

### Background and Evidence

Both parties agree that this month to month tenancy started on July 01, 2005 and ended on October 05, 2009. Rent for this unit was \$676.00 per month and was due on the first of each month. The tenant paid a security deposit of \$325.00 on June 22, 2005.

The tenant testifies that the landlords' agent and herself signed a mutual agreement to end the tenancy on October 05, 2009. The tenant states that she moved from the rental unit on this date

and gave the landlords' agent her forwarding address in writing along with her telephone numbers. The landlord did not respond to the tenant and the tenant again sent her forwarding address to the landlords' agent by e-mail on October 21, 2009. The tenant testifies that the landlord did not return her security deposit to her within 15 days of October 05, 2009 when she originally gave her forwarding address.

The landlord testifies that the security deposit was withheld as the tenant had left damages to the rental unit. The landlords' agent states that at the time she was new to the position of manager of the building and was not aware that she had to make an application to keep the security deposit. The landlords agent states she does not recall getting the tenants forwarding address on October 05, 2009 but did receive the tenants forwarding address on October 21, 2009.

### Analysis

Both parties agree that the tenant did give the landlords' agent her forwarding address in writing on October 21, 2009. Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit (plus any interest accrued on the original amount) to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on October 21, 2009. As a result, the landlord had until November 05, 2009 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit or file an application to keep it. Therefore, I find that the tenant has established a claim for the return of double the security deposit plus accrued interest of \$11.51 on the original amount pursuant to section 38(6)(b) of the *Act*.

I find the tenant is entitled to a Monetary Order as follows pursuant to section 67 of the *Act*:

Double the security deposit	\$650.00
<b>Total amount owed to the tenant</b>	<b>\$661.51</b>

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$661.51**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: March 02, 2010.

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Dispute Resolution Officer