

## **DECISION**

**Dispute Codes:** MNDC

### **Introduction**

This is the Tenant's application for a Monetary Order for compensation for damage or loss under the Act, Regulation or tenancy agreement.

All parties gave affirmed testimony and this matter proceeded on its merits.

### **Issues to be Determined**

Is the Tenant entitled to a Monetary Order for compensation, and if so, in what amount?

### **Background and Evidence**

The Tenant's claim is for compensation in the amount of \$750.00 from the Landlord, for return of \$300.00 in overpaid rent for the month of March, 2009, and return of overpayment of rent for the month of October, 2009, in the amount of \$450.00.

#### **The Tenant and her Witnesses gave the following testimony**

The Tenant testified that she received a portion of the overpaid rent from the Landlord, in the amount of \$110.00, on December 19, 2009.

There was an altercation between the Landlord and the Tenant on September 26, 2009. The police attended and the Tenant was arrested, charged with assault, and placed on an undertaking with conditions not to have contact with the Landlord; or to return to the rental property, except on one occasion in the presence of an approved third party to collect her belongings. The Tenant testified that the charges were subsequently dropped on October 18, 2009. The Tenant denied instigating the altercation with her Landlord.

The Tenant returned to the rental unit on September 27, 2009, to collect her belongings. She was to meet the third party there, who was late. The Tenant did not have a car and was not able to remove her bed and some other items, because the third party had the vehicle. The third party was in a rush and therefore the Tenant had no time to properly clean the rental unit.

The Tenant stated that the Landlord was paid rent directly by the Ministry of Social

Services, on her behalf. The Landlord received rent from the Ministry for the month of October, 2009. The Tenant testified that the Landlord told her to get out of the rental unit on September 26, 2009. The Tenant testified that she did not go back after September 27, 2009, on the advice of the Police. Therefore, the Tenant submits the Landlord is not entitled to rent for October, 2009.

The Tenant testified that the Landlord has disposed of her personal property, including her bed, but she does not know where her property is. The Tenant testified that the bed was worth about \$20.00.

#### The Landlord gave the following testimony

At the beginning of the tenancy, on March 1, 2009, the monthly rent was \$300.00. The Tenant's aunt paid rent for the Tenant for the month of March, 2009. The \$300.00 that was paid by the Ministry in March, 2010, was held by the Landlord in the event that if the Tenant gave notice to vacate the rental unit, it would be used for last month's rent payment. Rent was increased to \$450.00 per month because the Tenant had a roommate.

The Landlord testified that the third party who was present on September 27, 2009, told the Landlord that it was the Tenant who was late, and not the third party.

The Landlord had the rental unit cleaned by a professional cleaning company, and had the Tenant's bed removed. The Landlord deducted the cost of cleaning the rental unit and disposing of the Tenant's bed from the \$300.00 she was holding, and returned the remainder, in the amount of \$110.00, to the Tenant on or about December 19, 2009.

The Landlord spoke to the police and was advised that the Tenant was able to return to the rental unit on October 18, 2009, because the charges against the Tenant had been dropped.

The Landlord submitted that the Tenant did not give the Landlord 30 day's written notice that she was vacating the rental unit and therefore the Landlord is entitled to retain October's rent in the amount of \$450.00.

#### **Analysis**

There was no written tenancy agreement between the parties. However, I find that the Tenant paid rent to the Landlord and there was an oral tenancy agreement in place

between the parties.

The Tenant applied for return of October, 2009, rent in the amount of \$450.00. The Tenant and the Landlord had an altercation, the police attended, and the Tenant was removed from the rental unit and placed on an undertaking with conditions including not to return to the property and to have no contact with the Landlord. On October 18, 2009, the charges were dropped, the undertaking was cancelled, and the Tenant was free to return to the rental unit on October 18, 2009. The Tenant did not return to the rental unit and did not provide the Landlord with due written notice that she was ending the tenancy. Therefore, I find that the Landlord is entitled to keep the rent payment for the month of October, 2009, in the amount of \$450.00. This portion of the Tenant's application is dismissed.

There was disagreement between the parties with respect to \$300.00 that was paid by the Ministry to the Landlord, on the Tenant's behalf, in March, 2009. The Tenant stated that it was overpayment of rent for the month of March, 2009. The Landlord stated that it was held as payment for the last month's rent of the tenancy, and that the Tenant had agreed to this arrangement.

Section 1 of the Act defines "security deposit", as follows:

**"security deposit"** means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be **held as security for any liability or obligation of the tenant respecting the residential property**, but does not include any of the following:

- (a) post-dated cheques for rent;
  - (b) a pet damage deposit;
  - (c) a fee prescribed under section 97 (2) (k) *[regulations in relation to fees]*;
- (emphasis added)

I find that the additional \$300.00 paid to the Landlord on the Tenant's behalf in March, 2009, is a security deposit. A security deposit is held in trust for the Tenant, to be applied in accordance with the provisions of Section 38 of the Act.

Section 38(1) of the Act states:

**Return of security deposit and pet damage deposit**

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

The Landlord returned a portion of the Tenant's security deposit on December 19, 2009, and did not file an Application for Dispute Resolution against the remainder of the security deposit. No interest has accrued on the security deposit.

Therefore, pursuant to the provisions of Section 38 of the Act, I find the Tenant is entitled to return of the residue of the security deposit, in the amount of \$190.00.

The Tenant is hereby provided with a Monetary Order against the Landlord in the amount of \$190.00.

### **Conclusion**

I grant the Tenant a Monetary Order in the amount of \$190.00. This Order must be served on the Landlord, and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced 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.