

## **DECISION**

Dispute Codes      MNDC MNSD FF O

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of her security and pet deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for other reason which are to collect interest owed on the pet and security deposits, and to recover the cost of the filing fee from the Landlord for this application.

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 December 4, 2009. The Tenant provided the Canada Post tracking number in her testimony. The Landlord is deemed to have received the hearing package on December 9, 2009, five days after it was mailed in accordance with section 90 of the *Act*.

The Tenant and her Witness dialed into the teleconference, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one attended on behalf of the Landlord despite the Landlord being served notice of today's hearing in accordance with the *Act*.

### Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order a) for the return of her security and pet deposit, b) for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and c) for other reasons which are to collect interest owed on the pet and security deposits,

### Background and Evidence

The month to month tenancy agreement commenced on March 27, 2009 and ended after the Tenant provided the Landlord with one month's written notice, via e-mail, on September 30, 2009 to end the tenancy effective October 31, 2009. Rent was payable on the first of each month in the amount of \$550.00 and the Tenant paid the full \$550.00 of rent for the month of October 2009. On March 27, 2009 the Tenant paid the Landlord \$200.00 for the pet deposit and \$275.00 for the security deposit. No move-in or move-out inspection reports were completed by the Landlord in the presence of the Tenant.

The Witness testified she was with the Tenant on October 26, 2009 cleaning at the rental unit when the Landlord attended the rental unit and told the Tenant she had to vacate the unit immediately and hand over the rental unit keys to the Landlord. The Witness stated that they told the Landlord that the Tenant had paid the full month's rent so she was entitled to possession of the unit until October 31, 2009 but that the Landlord told the Tenant she had to get out immediately because she had moved into the rental unit earlier than the first of the month.

The Witness stated that she returned to the rental unit with the Tenant a few days later to attend a scheduled meeting to have the move-out inspection report completed. The Witness argued that the Landlord did not attend the rental unit at the scheduled time so they waited for sometime before the Landlord finally attended. The Witness testified that when the Landlord attended the unit he refused them access and refused to complete the move-out inspection form.

The Tenant testified she provided the Landlord with her forwarding address in writing, via e-mail on October 31, 2009 as supported by her documentary evidence. The Tenant argued that she always attempted to deal with the Landlord and or his Son by telephone at first but that when that failed she began to communicate with them via e-mail.

The Tenant confirmed she received a cheque in the amount of \$69.00 from the Landlord on November 24, 2009, as partial return of her security and pet deposits. The Tenant stated that she has cashed the cheque and it has cleared the bank. The Tenant referred to her documentary evidence of a copy of a note the Landlord included with his partial refund cheque which shows the Landlord withheld \$406.00 from the deposits which consists of seven months of utilities in the amount of \$266.00, and \$140.00 for carpet cleaning. The Tenant argued she did not provide the Landlord written permission to retain money from the deposits and she has never been informed that the Landlord had applied for dispute resolution to keep the money.

The Tenant is also seeking \$360.00 as compensation for a service previously agreed upon and not provided with respect to laundry services. The Tenant argued that her tenancy agreement provides for free laundry and at the time of signing the agreement the Landlord told the Tenant he had ordered a washer and dryer and they were expected to be delivered within the first month of the tenancy. The Tenant stated that she complained to the Landlord and his son over the telephone and even provided a dryer but that they refused to hook it up. The Tenant confirmed a washer was provided during the last month of her tenancy but that it never worked properly so she didn't use

it. The Tenant stated that she had to drive to the laundry mat once per week and did approximately two or three loads of laundry each week at a cost of \$2.50 per wash and \$2.50 per dryer.

### Analysis

All of the testimony and documentary evidence was carefully considered. Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her Witness.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

In this case the Landlords issued the Tenant a cheque in the amount of \$69.00 on November 14, 2009 which was received by the Tenant on November 24, 2009. A balance of \$406.00 of the security and pet deposits was retained by the Landlord.

The Landlord did not apply for dispute resolution to keep the security and pet deposit, does not have an Order allowing him to keep the \$406.00, and he does not have the Tenant's written consent to retain \$406.00 of the security deposit.

The evidence supports that the Tenant provided the Landlord with her forwarding address on October 31, 2009.

Section 38(1) of the Act stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make

application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security and pet deposit in full or file for dispute resolution no later than November 15, 2009.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security and pet deposits. I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double the balance owed of her security and pet deposits plus applicable interest.

The Tenant is seeking \$360.00 in compensation from the Landlord for not providing a washer and dryer as per the tenancy agreement. The evidence supports that the tenancy agreement included free laundry and the Tenant attempted to mitigate her losses by providing the Landlord with a dryer, however the Landlord failed to have the dryer installed or to have a washer installed during the first six months of the tenancy agreement. Section 27 of the *Act* provides that a landlord may terminate or restrict a service or facility if they reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service. Based on the aforementioned I find the Tenant has proven the test for damage or loss as listed above and I approve her claim in the amount of \$325.00 which is comprised of \$50.00 per month for the period of April 1, 2009 to September 30, 2009, (6 x \$50.00) where there was no washer or dryer installed, and \$25.00 for the month of October 2009 where there was a washer but no dryer installed.

I find that the Tenant has succeeded with her application therefore I award recovery of the \$50.00 filing fee.

**Monetary Order** – I find that the Tenant is entitled to a monetary claim as follows:

Doubled Balance owed on Security Deposit 2 x \$406.00 (\$475.00 - \$69.00)	\$812.00
Reduced service or facility (No Laundry services)	325.00
Interest owed on the Security Deposit of \$475.00 from March 27, 2009 to April 7, 2010	0.00
Filing Fee	50.00
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$1,187.00</b>

### Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$1,187.00**. The order must be

served on the respondent Landlord 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: April 07, 2010.

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Dispute Resolution Officer