

## **DECISION**

Dispute Codes      MNSD

### Introduction

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

Service of the hearing documents, by the Tenant to the Landlord was confirmed received by the Landlord.

The Landlord and the Tenant appeared, 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 under sections 38, and 67 of the *Residential Tenancy Act*?

### Background and Evidence

The Tenant testified that she occupied the rental unit for approximately one half of a year and that she moved out of the rental unit on December 14, 2009. The Monthly rent was payable in the amount of \$850.00 and the Tenant paid the Landlord a security deposit of \$425.00 in mid to late October 2009.

The Landlord confirmed the Tenant's testimony and argued that he did not return the Tenant's security deposit because he suffered a loss for several reasons including but not limited to a) the Tenant did not provide the Landlord with proper written notice to end the tenancy, b) the landlord had to make several trips out to the rental unit, which is located in a different city, to attend or repair items that were not broken, and c) the Landlord had to pay for pest control systems when there was no evidence of rodents.

The Landlord testified that he has not applied to dispute resolution to retain the security deposit, the Landlord does not possess an Order granting him authority to retain the security deposit, and the Landlord does not have the Tenant's written permission to retain the Tenant's security deposit.

The Tenant submitted documentary evidence which included a copy of the letter she wrote to the Landlord on January 6, 2010, where she requests the return of her security deposit and provides the Landlord with her forwarding address, in writing. Proof of service that the aforementioned letter was sent to the Landlord via registered mail on January 11, 2010, and her application for dispute resolution where she requests the return of double her security deposit.

### Analysis

All of the testimony and documentary evidence was carefully considered.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

The Landlord has testified that they did not apply for dispute resolution to keep the security deposit, they do not have an Order allowing them to keep the security deposit, and they do not have the Tenant's written consent to retain the security deposit.

The evidence supports that the Tenant provided the Landlords with her forwarding address, in writing, via registered mail sent on January 11, 2010. The Landlords are deemed to have received the Tenant's forwarding address on January 16, 2010, five days after it was mailed, in accordance with section 90 of the *Act*.

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 Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than January 31, 2010.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are 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 deposit. 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 her security deposit of \$850.00 plus interest of \$0.00.

I do not accept the Landlords' argument that the Landlords' violation was somehow excused due to the Tenant's alleged failure to comply with the Act or agreement. Even if the Tenant was found to be in violation of the Act, there is no provision in the Act that extends immunity for a reciprocal breach on the part of a Landlord.

In regards to the Landlord's claims relating to loss that they may have suffered, I am not able to neither hear nor consider the Landlord's claim during these proceedings as this hearing was convened solely to deal with the Tenant's application. That being said, I must point out that the Landlords are at liberty to make a separate application for dispute resolution and to resubmit their evidence.

### 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 **\$850.00**. The order must be served on the respondent Landlords 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 20, 2010.

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Dispute Resolution Officer