

## **DECISION**

Dispute Codes

MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of double his security deposit 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 8, 2009. The Tenant provided copies of the Canada Post receipts in his documentary evidence. The Landlord is deemed to have received the hearing package on December 13, 2009, five days after they were served in accordance with section 90 of the *Act*.

The Tenant appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one appeared 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 under sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The month to month tenancy began on February 1, 2009 and ended when the Tenant vacated the rental unit on November 1, 2009. Rent was payable on the first of each month in the amount of \$410.00 and the Tenant paid a security deposit of \$200.00 on February 1, 2009.

The Tenant provided documentary evidence which included, among other things, a copy of the written tenancy agreement written in Chinese with some words translated to English and copies of receipts written in Chinese with some words translated to English.

The Tenant argued he provided the Landlord a written request for the return of his security deposit dated November 8, 2009, which included the Tenant's forwarding address in writing. The Tenant stated that he forgot to provide a copy of this letter in the

evidence to the Residential Tenancy Branch and agreed to fax a copy of this letter to me before the end of the business day April 27, 2010.

### Analysis

All of the testimony and documentary evidence was carefully considered.

A fax was received from the Tenant on April 27, 2010 which included a copy of the letter the Tenant sent to the Landlord on November 8, 2009 requesting the return of the security deposit and provided the Landlord with the Tenant's forwarding address in writing. To ensure the principals of natural justice are upheld, a copy of the document(s) received by fax from the Tenant is attached to this decision.

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 evidence supports the Tenant entered into a tenancy agreement, paid the Landlord a \$200.00 security deposit on February 1, 2009, the tenancy ended on November 1, 2009, the Tenant provided the Landlord with his forwarding address on November 8, 2009, the security deposit has not been returned to the Tenant, and the Landlord has not applied for dispute resolution to keep the security deposit.

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 deposit in full or file for dispute resolution no later than November 23, 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 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 his claim for the return of double the security deposit plus interest.

I find that the Tenant has succeeded with his 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 the Security Deposit 2 x \$200.00	\$400.00
Interest owed on the Security Deposit of \$200.00 from February 1, 2009 to April 27, 2010	0.00
Filing Fee	50.00
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$450.00</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 **\$450.00**. 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 28, 2010.

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Dispute Resolution Officer