

## **DECISION**

### Dispute Codes MNSD, FF

#### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant for a monetary order for return of the security deposit and the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the Landlord?

#### Background and Evidence

The Tenant paid a security deposit of \$800.00 on March 25, 2005. The Tenant vacated the premises on April 4, 2008, at which time he provided the Landlord with a written notice of the forwarding address to return the security deposit to. The Tenant also sent the Landlord a letter by registered mail with his forwarding address. The Tenant did not sign over a portion of the security deposit.

The Landlord did not do an incoming condition inspection report. He claims he could not do an outgoing condition inspection report because the Tenant had already left the rental unit. He claims he kept the security deposit because he alleges the Tenant did not clean the unit, overhauled and damaged the rental unit. He had insufficient evidence to prove any of these allegations at the hearing.

#### Analysis

Based on the foregoing, the evidence and testimony, and on a balance of probabilities, I find the Landlord has breached sections 23 and 38 of the Act.

The security deposit paid by the Tenant is held in trust by the Landlord and the Landlord may not keep the deposit, unless he has a right to do so under the Act. I find there was no right under the Act for the Landlord to keep the security deposit here.

Furthermore, by not performing the incoming condition inspection report in accordance with section 23 of the Act, the Landlord was precluded from claiming against the

security deposit. I also find the Landlord failed to perform an outgoing condition inspection report under the Act, though regardless, he was already exempted from the security deposit from the outset by not adhering to section 23.

There was also no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus interest.

Therefore, I find the Tenant has established a loss due to the Landlord's breach of the Act.

### Conclusion

The Landlord has breached sections 23 and 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$1,678.32**, comprised of double the security deposit (2 x \$800.00), the interest on the original amounts held (\$28.32), and the \$50.00 fee for filing this Application.

The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court 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*.

Dated: April 28, 2010.

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Dispute Resolution Officer