

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for the return of their security and key deposits and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on December 10, 2009. Mail receipt numbers were provided in the Tenant's verbal testimony. The Landlord is deemed to be served the hearing documents on December 15, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The female Tenant appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. The Landlord did not appear despite being served with notice of today's hearing in accordance with the *Act*.

### Issues(s) to be Decided

Are the Tenants entitled to a Monetary Order for the return of their security deposit and key deposit under sections 38 and 67 of the *Residential Tenancy Act*?

### Background and Evidence

The month to month tenancy agreement began on May 15, 2009 and ended on October 28, 2009. Both parties attended a dispute resolution hearing on August 28, 2009. The Landlord served the Tenants a two month notice to end tenancy for landlord's use of the property, immediately following the hearing on August 28, 2009, claiming the property had been sold and the new owner requested vacant possession. The Notice was posted to the Tenants' door on August 28, 2009. Rent was payable on the first of each

month in the amount of \$1,400.00 and the Tenants paid a security deposit of \$700.00 on May 3, 2009, and a key deposit of \$70.00 on May 15, 2009.

The Tenant testified they did not have to pay for October 2009 rent as this was their one month compensation for being issued the 2 Month Notice to End Tenancy. The Tenant advised that they were later informed by the Landlord and two real estate agents that the Landlord withdrew from the sale agreement and the Landlord chose to move back into the rental unit.

The Tenant testified that they rented this unit for a period when they were renovating the home they owned and that they had a verbal agreement with the Landlord that they would continue to have their mail delivered to their home address and the Landlord would continue to use the rental unit as her mailing address. The Tenant argued that the Landlord knew their forwarding address from the onset of the tenancy agreement and that they requested their deposits to be sent to their home during several verbal conversations.

### Analysis

All of the testimony and documentary evidence was carefully considered.

The Tenants have applied for the return their security and key deposits; however the Tenants have not met the burden of proving that they gave the landlord a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for dispute resolution.

The burden of proving a claim lies with the person making the claim and when it is just that person's word against the word of the other, that burden of proof is not met. The applicant claims that the Landlord had their forwarding address at the onset of the tenancy agreement and that they had a verbal agreement with the Landlord that they would keep that address during the tenancy; however the Landlord was not in attendance at the hearing to neither confirm nor deny the alleged verbal agreement.

Therefore in the absence of any proof that a forwarding address was given to the landlord, in writing, it is my finding that, at the time that the Tenants applied for dispute resolution, the Landlord was under no obligation to return the security deposit and therefore this application is premature. I therefore dismiss this claim with leave to re-apply.

At the hearing the Tenant stated that the address on the application for dispute resolution is their present forwarding address; therefore the Landlord is now considered to have received the forwarding address in writing as of today, May 3, 2010.

As the Tenants have not been successful with their application, I hereby decline to award recovery of the filing fee.

#### Conclusion

The Tenants' application is hereby dismissed, with leave to reapply.

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: May 03, 2010.

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Dispute Resolution Officer