

## **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 the 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 in December, 2009. The Landlord confirmed receipt of the hearing package.

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, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The fixed term tenancy began on October 1, 2008 and ended one year later on October 31, 2009 in accordance with the tenancy agreement. Rent was payable on the first of each month. The Tenants paid a security deposit of \$675.00 and a key/remote deposit of \$50.00 for a total deposit of \$725.00 on October 1, 2008.

The Landlord confirmed the Tenant's testimony that a walk through inspection report was not completed for the move-in or the move-out inspections.

The Tenant referred to his documentary evidence in support that the Landlord was given his forwarding address in writing on November 10, 2009, via registered mail.

The Landlord confirmed that he did not apply for dispute resolution to obtain an Order allowing him to retain the deposits; he does not possess an Order authorizing him to retain the deposits, and the Landlord does not have the Tenants' permission, in writing, to keep the deposits.

The Landlord argued that the Tenants left some of their belongings and lots of garbage in the rental unit and that the Tenants told the Landlord he could keep half of the security deposit to cover the cost of removing the garbage. The Landlord testified that he has receipts that he could submit as proof of his costs.

The Tenant argued that they did not tell the Landlord he could keep any portion of their deposits.

### 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 evidence supports that the Landlord did not apply for dispute resolution to keep the security and key/remote deposits, he did not have an Order allowing them to keep the deposits, and he does not have the Tenants' written consent to keep the security and key/remote deposits.

The evidence supports that the Tenant provided the Landlord with his forwarding address via registered mail on November 10, 2009. The Landlord is deemed to have received the forwarding address on November 15, 2009, 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 Landlord was required to return the Tenants' security and key/remote deposits in full or file for dispute resolution no later than November 30, 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 key/remote deposits 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 balance owed of his security and key/remote deposits, 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:

Double the Security and Key/Remote Deposits 2 x \$725.00	\$1,450.00
Interest owed on the Security and Key/Remote Deposits of \$725.00 from October 1, 2008 to May 5, 2010	2.73
Filing Fee	<u>50.00</u>
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$1,502.73</b>

In regards to the Landlord's claims relating to loss that he allegedly 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 Landlord is 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 **\$1,502.73**. 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: May 05, 2010.

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Dispute Resolution Officer