

## DECISION

### Dispute Codes

MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain 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*, served personally to the Landlord by a third party on approximately December 12, 2009.

The Landlord and male 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

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

### Background and Evidence

The Tenant testified that they entered into a verbal tenancy agreement to rent the Landlord's basement suite beginning December 1, 2008. The Tenant argued that thirty days written notice was provided to the Landlord on August 31, 2009 to end the tenancy effective September 30, 2009, which included their forwarding address. The rent was payable on the first of each month in the amount of \$1,450.00 and a security deposit of \$725.00 was paid to the Landlord on November 14, 2008.

The Landlord began her testimony stating that there was never a half of month's rent paid to her and then confirmed the Tenant's testimony that the tenancy began on December 1, 2008, rent was payable on the first of each month in the amount of \$1,450.00, and that a security deposit of \$725.00 was paid prior to the onset of the tenancy; however the Landlord did not know the exact date the deposit was paid.

The Landlord confirmed she received written notice to end the tenancy, that she found this written notice in her mailbox on August 31, 2009 and that it was her understanding that this notice was late as it should have been sent to her three days before the end of the month. The Landlord argued that she did not know when the Tenants vacated the rental unit as they were not finished cleaning when she last checked the unit before going to work on the evening of September 30, 2009, so she instructed the Tenants to leave the key in her mail box when they were finished. The Landlord confirmed she found the key in the mailbox, as instructed, when she checked on October 1, 2009, and that the Tenants were gone. The Landlord stated that she did not complete a move-in inspection form and she did not complete a move-out inspection form because the Tenants were gone.

The Landlord testified that she has not applied for dispute resolution to keep the security deposit, the Landlord does not have an Order issued to her giving her permission to keep the security deposit, and the Landlord does not have written permission signed by the Tenants authorizing the Landlord to keep the security deposit.

The Landlord argued that the Tenants never provided her with their forwarding address in writing and that they only provided her the information in two different voice messages. The Landlord went on to say that she works with the same employer as the Tenants and the Tenants provided her their address again in late November 2009, approximately November 24, 2009, when they approached her at work and the Tenant worked with the Landlord to write down their address. The Landlord argued that she mailed the Tenants two separate cheques for \$600.00 but that she could not remember which addresses they were sent to or which dates they were issued. The Landlord stated that the cheques were never returned to her and were never cashed. The Landlord stated that she does not want to pay for stop payments on these cheques and stated she is comfortable having these cheques mailed out and not cashed.

The Tenant disputed the Landlord's testimony stating that their forwarding address was provided to the Landlord, first in writing in their notice to end the tenancy and then two additional times which were verbal and again with the Landlord at their place of employment in late November 2009. The Tenant confirmed he received a cheque in the amount of \$600.00 from the Landlord, the day after they applied for dispute resolution, and that this cheque was dated for what the Tenant recalled as December 1, 2009. The Tenant confirmed that the cheque has not been cashed.

The Tenant stated that he still has a copy of the notice to end the tenancy provided to the Landlord in August 2009, and the Tenant agreed to fax a copy of this notice to the *Residential Tenancy Branch*.

The Landlord asked how I would know if the Tenant's fax would contain an accurate or true copy of the notice to end the tenancy she was served. I explained to the Landlord that a copy of the fax, if received as requested from the Tenant, would be attached to my decision to ensure the principals of natural justice are upheld.

### Analysis

All of the testimony and documentary evidence was carefully considered.

A document was received from the Tenants, after the hearing, which included a copy of a letter that was dated September 30/09 which provided the Landlord with the Tenants' forwarding address. This evidence will not be considered in my decision, as there was no testimony pertaining to this letter and there is no documentation to support how or when this document was sent to the Landlord and no indication when the Landlord received it. The document is attached to this decision, pursuant to # 11.5 of the *Residential Tenancy Branch Rules of Procedure*.

In response to the Landlord's argument that the Tenants did not provide her the required amount of notice to end the tenancy, I refer the Landlord to section 45 of the Act which provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenants 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 Applicants 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 Tenants bear the burden of proof.

The Landlord confirmed she did not apply for dispute resolution to keep the security deposit, she does not have an Order allowing her to keep the security deposit or any portion thereof, and the Landlord does not have the Tenants' written consent to retain the security deposit or any portion thereof.

The evidence supports that the Tenants have been requesting the return of their security deposit since the end of the tenancy on September 30, 2009, and argued that they have provided their forwarding address on several occasions to the Landlord. I find that both parties confirmed that the Landlord and Tenant met at their place of employment in late November 2009, approximately November 24, 2009, at which time the forwarding address was put in writing. The Landlord then issued the Tenants a cheque, for \$600.00, an amount which is less than the full security deposit amount paid, and was not received by the Tenants until after the Tenants applied for dispute resolution.

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 in full, 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 deposit in full or file for dispute resolution no later than December 9, 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 Tenants have succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of double the balance owed of their security deposit plus interest.

I find that the Tenants have succeeded with their application therefore I award recovery of the \$50.00 filing fee.

The Tenants have confirmed they possess a cheque issued by the Landlord in the amount of \$600.00 and dated on approximately December 1, 2010. Given that this

cheque is now over five months old, it could potentially be considered stale dated and non-negotiable, therefore I hereby order the Tenants to destroy this cheque.

**Monetary Order** – I find that the Tenants are entitled to a monetary claim as follows:

Double the Security Deposit 2 x \$725.00	\$1,450.00
Interest owed on the Security Deposit of \$725.00 from November 14, 2008 to May 7, 2010	1.43
Filing Fee	<u>50.00</u>
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$1,501.43</b>

### Conclusion

I HEREBY FIND in favor of the Tenants' monetary claim. A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$1,501.43**. 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 07, 2010.

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Dispute Resolution Officer