

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and her witness. The landlord did not attend.

The tenant testified that she served the landlord with notice of this hearing and her evidence via registered mail. Based on the tenant's testimony, I am satisfied the landlord was served in accordance with Section 89 of the *Residential Tenancy Act (Act)*.

### Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation and for all or part of the security deposit, pursuant to sections 38, 50, 51, 67, and 72 of the *Act*.

### Background and Evidence

The tenancy began in August 2009 as a month to month tenancy for a monthly rent of \$650.00 due on the 1<sup>st</sup> of the month with a security deposit of \$325.00 paid. The tenant testified she received a verbal notice from the landlord on September 1, 2009 that effective on October 31, 2009 the tenancy would end for the landlord to have his daughter move into the rental unit.

The tenant testified that she gave notice to the landlord on October 26, 2009 that she would be moving out within 10 days as is allowed under Section 50 of the *Act* and noted in her letter dated October 28, 2009 that the landlord could keep 4 days worth of rent for November, 2009 in compliance with Section 50.

The tenant has submitted copies of three type written notes to the landlord dating from October 28, 2009, November 3, 2009 and November 27, 2009 regarding compensation after receiving a 2 Month Notice to End Tenancy for Landlord's Personal Use and return of the security deposit. The note dated November 27, 2009 includes the tenant's forwarding address.

The tenant further testified that the landlord failed to provide compensation in the equivalent of 1 months' rent to the tenant as required under the *Act*, as well, the landlord has refused to return the tenant's security deposit.

The tenant's witness testified that she attended with the tenant when she hand delivered the note date October 28, 2009. Both the tenant and the witness stated the landlord ripped up the note when it was handed to him outside his home.

### Analysis

In the absence of any evidence from the landlord and based on the evidence before me, I find the tenant was served with a verbal notice to end tenancy for landlord's use and as such the landlord must compensate the tenant, in accordance Section 51, the equivalent of 1 months' rent in the amount of \$650.00.

Based on the testimony provided, I find the landlord has failed to provide this compensation.

As per the tenant's testimony the effective date of the end of the tenancy based on the landlord's verbal notice was October 31, 2009. There was no requirement for the tenant to provide a 10 Day Notice under Section 50 to end the tenancy on October 31, 2009. I therefore find the tenant was not responsible for any rent in November 2009.

Section 38 of the *Act* requires a landlord, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, must return the tenant's security deposit or file an Application for Dispute Resolution. I find the landlord has failed to comply with this section of the *Act*.

Section 38 (6) states that should the landlord fail to return the security deposit or file an Application for Dispute Resolution the landlord must pay the tenant double the amount of the security deposit. As a result, I find the tenant is entitled to double the security deposit amount.

### Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,300.00** comprised of \$650.00 compensation

owed for ending a tenancy for landlord's use and \$650.00 for double the amount of the security deposit.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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: May 17, 2010.

---

Dispute Resolution Officer