

DECISION

Dispute Codes: MNSD, MNDC and RPP

Introduction

This application was brought by the tenant seeking return of the security deposit in double pursuant to section 38(6) of the *Act* on the grounds that the landlord did not return it within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address. The tenant also seeks return of her rent for December 2009 and an Order that the landlord return her personal property.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a Monetary Order for return of the security deposit, and whether the amount should be doubled. In addition, it must be decided whether the tenant is entitled to return of rent and an order for return of personal property.

Background and Evidence

This month to month tenancy began on October 23, 2009 and ended on December 20, 2009. Rent was \$550 per month and the landlord holds a security deposit of \$275 paid on November 1, 2009.

During the hearing, the tenant gave evidence that she had been wrongfully evicted on December 20, 2009.

The landlord stated that the tenant had left the tenancy voluntarily. She said that she had confronted the tenant about a substantial number of her foodstuffs and some kitchen items that had gone missing and the tenant conceded that she had taken them without consent. The landlord said she then told the tenant that she would have to ask her to leave. She said the tenant left that night and did not return until December 29, 2009 when she came with her parents to pick up her belongings which the landlord had packed when the tenant did not return.

The tenant said some of her food had not been returned but the landlord stated she had returned everything she could identify as belonging to the tenant.

The landlord stated that she had not returned the security deposit because she did not have the tenant's forwarding address. She made a record of the tenant's address at the hearing and agreed that the date of the hearing would constitute the date on which she received the address for the purposes of section 38 of the *Act*. She stated that she would return the security deposit by mail immediately.

The parties agreed that the tenant had paid only \$500 of the December rent and that the landlord had not charged for the portion of October during which the tenant occupied the suite.

Analysis

In the absence of any documentary or corroborating evidence to the contrary, I find in favour of the landlord's accounting of events, as follows:

1. The landlord did not have the tenant's forwarding address and the tenant, therefore, is not entitled to claim its return in double. I accept the landlord's

statement that she will return it now that she has the address, and that she is aware of the provisions of section 38 of the *Act* and will abide by them;

2. The tenant left the rental unit voluntarily after discussion of the landlord's missing items and was not unlawfully evicted. Her claim for return of rent is dismissed;
3. The tenant retrieved her property on December 29, 2009 and her claim for an Order for the return of property is dismissed.

Conclusion

The tenant's application is dismissed in its entirety. In the event the security deposit is not returned, the tenant is granted leave to reapply on that claim only.

May 31, 2010