

## **DECISION**

Dispute Codes MNSD, FF

### Introduction

This is an application by the Tenant for a monetary order for return of double the security deposit and the filing fee paid for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the Landlord?

### Background and Evidence

This tenancy began November 1, 2006.

The Tenant paid a security deposit of \$360.00 on October 5, 2006.

The Tenant was vacating the rental unit for the end of November 2009.

On or about November 21, 2009, the Agent for the Landlord provided a sheet of paper with handwriting on it to the Tenant. The document is in the name of the Tenant's spouse and purports to have her agree to have carpet cleaning fees deducted from the security deposit. The Tenant signed it.

The Tenant testified he does not read English and alleges he was informed by the Agent for the Landlord that the document was written by his wife for him to sign.

The Agent for the Landlord argued the Tenant could sign on behalf his wife for the carpet cleaning fees.

In early December of 2009, the Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to. On December 15, 2009, the Landlord wrote to the Tenant informing him he had forfeited the security deposit for carpet cleaning and carpet replacement.

### Analysis

Based on the foregoing, the evidence and testimony, and on a balance of probabilities, I find that the Landlord has breached section 38 of the Act.

In this particular case, I find that the Tenant did not have authority to sign a document in his spouse's name. The document is clearly in the spouse's name. If the Agent for the Landlord wanted the Tenant to sign for deductions from the security deposit, he should have made it out in the Tenant's name. One also queries why the Agent simply did not have the spouse sign since it was in her name. Nevertheless, I find that the Landlord did not have valid written authority to make deductions from the security deposit.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus the interest.

### Conclusion

The Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the Act. Here the Landlord did not have authority under the Act to keep any portion of the security deposit.

Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit or interest.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$781.33**, comprised of double the security deposit (2 x \$360.00) the interest on the original amounts held (\$11.33), and the \$50.00 fee for filing this Application.

The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

I have also forwarded the Landlord a copy of a guidebook to Residential Tenancies in British Columbia, for their future reference.

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: June 01, 2010.

---

Dispute Resolution Officer