

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of double her security deposit.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on March 11, 2010. Registered mail receipts were provided in the Tenant's evidence. 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 and 67 of the *Residential Tenancy Act*?

### Background and Evidence

The undisputed testimony was the month to month tenancy began on May 1, 2009 and ended November 15, 2009 after the Landlord provided the Tenants with verbal notice to end tenancy because the house was sold. Rent was payable on the first of each month in the amount of \$1,000.00 and the Tenant paid a security deposit of \$500.00 on May 1, 2009. The Tenant provided the Landlord with a forwarding address, in writing, on November 15, 2009.

The Tenant testified that when the Landlord attended the rental unit on November 15, 2009 she told them that she did not have cash or a cheque to return the security deposit and she would return the security deposit within in the few days. The Tenant argued she left several messages for the Landlord and that they finally connected and made arrangements to meet at a local coffee shop in approximately December 2009 to return the deposit; however the Landlord failed to show up.

The Landlord confirmed the property was sold and the title was transferred on November 26, 2009, after the Tenant vacated the rental unit. The Landlord argued that

there were two Tenants and questioned why only one Tenant was named on the application. The Landlord went on to testify that she did have conversations with the Tenant and did have plans to meet at a coffee shop but that this meeting was scheduled to take place in January 2010 not December 2009. The Landlord confirmed that she did not attend the meeting and argued that she had a verbal conversation with the other tenant who said the security deposit was paid by him. The Landlord confirmed that she has not returned the security deposit to either Tenant, she does not have an Order from the Residential Tenancy Branch allowing her to retain the security deposit, the Landlord has not made an application for dispute resolution, and the Landlord does not have written permission from either Tenant to retain the security deposit.

### 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.

In this case the Landlord provided testimony that she did not apply for dispute resolution to keep the security deposit, does not have an Order allowing her to keep the security deposit, and she does not have the Tenants' written consent to retain the security deposit.

The evidence supports that the Tenant provided the Landlord with a forwarding address, in writing, on November 15, 2009.

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 deposit 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 deposit 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 her claim for the return of double the security deposit plus interest.

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

Double Security Deposit 2 x \$500.00	\$1,000.00
Interest owed on the Security Deposit of \$500.00 from May 1, 2009 to June 28, 2010	0.00
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$1,000.00</b>

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 **\$1,000.00**. The order must be served on the respondent Landlords 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: June 28, 2010.

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Dispute Resolution Officer