

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

### Issue to be Decided

Is the landlord entitled to a monetary order for 2 months of unpaid rent?

### Background and Evidence

The landlord claims that the tenant was obligated to pay rent in the amount of \$850.00 per month and that he failed to pay rent in the last two months of the tenancy. The tenant testified that his monthly rent was \$800.00 per month. The tenant maintained that he paid his rent in cash for those two months and acknowledged that while he did not pay rent for the last two weeks of the tenancy, he gave the landlord permission to apply the \$400.00 security deposit to his rent. The tenant's witness testified that she paid the landlord's wife the rent for September and one half of October. The landlord denied that his wife had received any rental payments, claimed that the security deposit was only \$300.00 and denied having received permission to apply the deposit to the rental arrears. The parties agreed that the landlord did not issue receipts for cash payments, but the landlord indicated that he would have been willing to sign a receipt had the tenant provided one.

### Analysis

I find that the rent was \$800.00 per month and that the tenant paid a \$400.00 security deposit. I have arrived at this conclusion because in a previous hearing addressing a

claim by the tenant, the dispute resolution officer found that rent was \$800.00 per month and made no mention that the parties disputed that amount, although much of the other evidence before him was in dispute. On the landlord's application he noted that the security deposit was \$400.00.

Generally, when a landlord alleges that he has not received rent, the burden shifts to the tenant to prove that rent was paid. In this situation, the tenant was in the practice of paying cash for his rent and the landlord did not give him receipts although he was required to do so under section 26(2) of the Act. I find the failure of the landlord to provide the tenant with receipts for rent paid in cash deprived the tenant of the ability to prove that payments were made. This together with the testimony of the tenant's witness who claimed that she paid rent to the landlord's wife has led me to find that the landlord has failed to prove his claim for rent for the month of September and the first half of October. I find that the tenant failed to pay rent for the last two weeks of October and I find that the tenant gave the landlord permission to retain the security deposit to satisfy that debt. I have concluded that the tenant gave permission because after the tenancy ended the tenant made a claim for compensation for an illegal eviction but did not make a claim for the return of his security deposit, although it would have made sense to do so had he not given the landlord permission to retain it.

### Conclusion

The landlord's claim is dismissed.

Dated: June 07, 2010

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