

## **DECISION**

### **Dispute Codes**

MNSD,FF

### **Introduction**

This hearing was convened in response to an application by the tenant for a Monetary Order for the return of part of the security deposit and inclusive of the filing fee for this application. Specifically, for the return of \$350 which the tenant and landlord previously agreed the landlord could retain.

Both parties attended the conference call hearing and participated with their testimony and submissions.

### **Issue(s) to be Decided**

Is the tenant entitled to the return of a portion of the security deposit which the tenant previously assigned to the landlord?

### **Background and Evidence**

The following is undisputed by both parties. The tenancy began on December 01, 2007 and ended November 15, 2009. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$562.50. The parties mutually conducted a start of tenancy inspection. At the end of the tenancy the landlord and tenant mutually conducted an end of tenancy inspection. As a result of the latter inspection the tenant and landlord agree that at the conclusion of the move out inspection each signed off on an agreement stating the landlord could retain the amount of \$350 for painting. The hearing did not have benefit of either inspection result. The tenant subsequently determined that the landlord was not able to retain the security deposit for painting and was not in agreement with the landlord's retention of the \$350.

### **Analysis**

In part, Section 38 of the Residential Tenancy Act (the Act) states as follows, in respect to the administration of the security deposit at the end of a tenancy.

**Return of security deposit and pet damage deposit**

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(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

On preponderance of the evidence and testimony of the tenant and the landlord, **I find** the landlord and tenant signed an agreement that the landlord would / could retain the amount of \$350 from the security deposit, in concert with the Act. As a result, **I dismiss** the tenant's application without leave to reapply.

**Conclusion**

The tenant's application **is dismissed** without leave to reapply.

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*.