

## **DECISION**

Dispute Codes      MNSD, OLC, O, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution for a monetary order and for an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by the tenant and both landlords.

The tenant submitted evidence to the Residential Tenancy Branch for this hearing on June 29, 2010. In the hearing the landlords confirmed that they received the tenant's evidence on the evening of June 29, 2010.

The Residential Tenancy Rules of Procedure Rule 3.5 requires that evidence be served on the parties and submitted to the Residential Tenancy Branch at least 5 days prior to the hearing. For this hearing evidence must have been served no later than June 22, 2010.

As the tenant failed to serve the evidence in accordance with the Rules of Procedure, I advised both parties in the hearing that I would not consider the evidence submitted by the tenant.

The landlord submitted evidence to the Residential Tenancy Branch by June 22, 2010 but confirmed in the hearing that he did not serve the evidence on the tenant at all. Rule of Procedure # 3.1 outlines that any evidence submitted by the applicant (landlord) to the Residential Tenancy Branch must be served on the respondent (tenant).

As the landlord failed to serve the evidence in accordance with the Rules of Procedure, I advised both parties in the hearing that I would not consider the evidence submitted by the landlord.

At the end of the hearing the tenant confirmed that she still had the landlord's cheque that was forwarded to her for a partial refund of the security deposit. The landlord also confirmed that because the tenant's application indicated that she had not received any security deposit they put a stop payment on the cheque.

### Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to provide a copy of the move out condition inspection report and to a monetary order for double the amount of the security deposit and to recover the filing fee from the

landlord for the cost of the Application for Dispute Resolution, pursuant to sections 35, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenancy began on August 1, 2009 as a 6 month fixed term tenancy for a monthly rent of \$1,200.00 due on the 1<sup>st</sup> of the month, a security deposit of \$600.00 was paid on July 21, 2009. The parties confirmed they agreed to end the tenancy on December 31, 2009.

The tenant testified that the landlord and she met to complete a move out condition inspection on December 31, 2009 at which time she provided them with her forwarding address and that she also sent the landlord her forwarding address in an email dated January 2, 2010.

The tenant testified that despite the landlord's agreement that there were no damages to the rental unit the landlord wanted to retain from the security an amount for utilities already owed and for an estimate on utilities owed to the end of the tenancy. The tenant stated she disagreed with the amount and refused to sign this portion of the security move out inspection authorizing the landlord to retain any funds from the security deposit.

The tenant acknowledged she received a cheque from the landlord in the amount of \$353.50 on the same day or shortly after she filed her Application for Dispute Resolution.

The landlord testified that they had agreed to end the tenancy early on the condition that the tenant paid the utilities that were already owed out of the security deposit. The landlord acknowledged that this was a verbal agreement. The landlord also noted that the tenant agreed to these payments for utilities when she signed the tenancy agreement.

The landlord also testified that during the move out inspection the tenant, without warning grabbed all the paper work and locked herself in her car for a period of time and then returned with the report and asked that the landlord now sign her copy that she had just completed in the car. The landlord stated he signed her copy at that time.

The tenant testified that she was concerned that she would get a true copy of the inspection report because she thought the landlord's were going to keep money from the security deposit for the utilities and she thought the security deposit was only for damage to the rental unit.

The landlord also testified that the because the tenant had objected so vehemently to the way they had calculated the estimate for the utilities owed, they did not charge that against her security deposit, only the amount that she had verbally agreed to as a condition to end the tenancy early.

The landlord further testified the security deposit refund cheque was put in the mail to the tenant on January 5, 2010. The tenant claims to have received the cheque on or later than January 18, 2010.

### Analysis

Section 35 of the *Act* requires the landlord and tenant inspect the rental unit at the end of the tenancy; that the landlord completes a condition inspection report and that the landlord and tenant must sign the condition inspection report; and finally the tenant be provided with a copy from the landlord.

I accept that the parties completed the move out condition inspection report and I accept the landlord's testimony that the tenant was given a copy of the report on December 31, 2010 in compliance with Section 35 and therefore dismiss this portion of the tenant's application.

Section 38(1) requires the landlord within 15 days of the end of a tenancy and receipt of the tenant's forwarding address to repay the security deposit or file an Application for Dispute Resolution claiming against the security deposit.

The section goes on to state, in subsection 4, that the landlord may retain from a security deposit an amount that the tenant agrees in writing that the landlord may retain or that the landlord receives an order from the Residential Tenancy Branch.

While the landlord has indicated they had a verbal agreement with the tenant to retain utilities already owed and that the tenancy agreement indicates the tenant was responsible for utilities and the tenant had failed to pay them, the landlord has nothing in writing allowing retention of any amount from the tenant's security deposit.

As a result, the landlord was required to return the full security deposit within 15 days of the end of the tenancy and receipt of the tenant's forwarding address. I accept the landlord did return, via mail, a portion of the security deposit within the 15 days, even if the tenant did not receive the cheque until the 18<sup>th</sup> day.

In order to be compliant with Section 38(1), the landlord must have returned the security deposit without any deductions. I find that the landlord has failed to comply with Section 38(1) of the *Act*. Section 38(6) states that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the amount of the security deposit.

Despite this finding the landlord and tenant still can determine how much the landlord is owed for utilities and come to an agreement for payment. If the parties are not able to reach an agreement, the landlord remains at liberty to file a separate Application for Dispute Resolution for any loss or damage under the *Act*, regulation or tenancy agreement.

### Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,250.00** comprised of \$1,200.00 for double the amount of the security deposit and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced 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: July 05, 2010.

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Dispute Resolution Officer