

## **DECISION**

Dispute Codes      MNSD FF

### 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 and to recover the cost of the filing fee from the Landlord for this application.

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 May 4, 2010. The Landlord confirmed receipt of the hearing package.

The Landlord, the Resident Manager, 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, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The undisputed testimony was the month to month tenancy began on December 1, 2008 and ended on December 31, 2009. Rent was payable on the first of each month in the amount of \$1,075.00 and the Tenant paid a security deposit of \$537.50 on November 10, 2008.

The Tenant testified that her husband attended the move-in inspection and signed the form while she attended the move-out inspection and signed the move-out form. She argued that the Landlords have yet to provide her with copies of either the move-in or move-out forms. Her forwarding address was sent to the Landlord via registered mail on February 11, 2010 and as per her documentary evidence the Landlord signed to receive the envelope on February 16, 2010. The Tenant is seeking the return of double the balance owed on her security deposit in the amount of \$887.00 which is comprised of \$537.50 less \$79.00 for carpet cleaning less \$15.00 for a bulb replacement times two (\$537.50 – 79.00 – 15.00 x 2). She argued that it was noted on the move out inspection

form that she agreed to have the carpet cleaning and bulb replacement amounts deducted from the deposit during the move-out inspection.

The Landlord and Resident Manager testified and confirmed that they have not provided the Tenant with copies of the move-in and move-out inspection reports and have not returned any portion of the security deposit. The Landlord confirmed receipt of the Tenant's forwarding address on February 16, 2010. They both argued the Tenant provided her notice to end tenancy late as it was not received until December 2, 2009, so they were retaining the deposit for compensation for January rent.

The Landlord and Resident Manager each confirmed they do not possess an Order instructing them to keep the security deposit, they have not made application for dispute resolution to keep the security deposit, and they do not have the Tenant's written permission 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.

The Landlords have admitted that they did not apply for dispute resolution to keep the security deposit, do not have an Order allowing them to keep the security deposit, and they do not have the Tenant's written consent to retain the security deposit. The evidence supports that the Tenant provided the Landlords with her forwarding address via registered mail and was signed received on February 16, 2010.

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 Landlords were required to return the Tenant's security deposit or file for dispute resolution no later than March 3, 2010.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are 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 and pet 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 balance owed of her security deposit, less the amounts the Tenant claims to have agreed to have deducted from the deposit, plus interest.

I find that the Tenant has succeeded with her application therefore I award recovery of the \$50.00 filing fee.

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

Security Deposit minus carpet cleaning and bulbs then doubled \$537.50 -\$79.00 -\$15.00 x 2	\$887.00
Interest owed on the Security Deposit of \$537.50 from November 10, 2008 to July 9, 2010	1.15
Filing Fee	50.00
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$938.15</b>

In regards to the Landlord's argument relating to a loss that they may have suffered, I am not able to neither hear nor consider the Landlord's claim during these proceedings as this hearing was convened solely to deal with the Tenant's application. That being said, I must point out that the Landlords are at liberty to make a separate application for dispute resolution and to resubmit their evidence.

### 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 **\$938.15**. 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: July 09, 2010.

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Dispute Resolution Officer