

## **DECISION**

### **Dispute Codes**

MNDC, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act(Act)*, regulation or tenancy agreement and a Monetary Order to recover double the security deposit and to recover the filing fee.

The tenant served the landlord by regular mail on March 24, 2010 with a copy of the Application and Notice of Hearing. Section 89 of the Act specifies that Notice of a hearing must be served either in person or by registered mail. In this instance the tenant has not served the landlord correctly. However, as the landlord has confirmed receipt of the hearing documents I find that the hearing documents have been sufficiently served for the purpose of this Act pursuant to s. 71(2)(c).

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### **Preliminary Issues**

Neither party has sent me a copy of the tenancy agreement. I have allowed both parties additional time to send me a copy of the tenancy agreement before my decision is rendered. The tenant faxed me a copy of her agreement and the landlord faxed me a copy of his agreement

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

- Is the tenant entitled to recover double her security deposit?
- Is the tenant entitled to money owed or compensation to recover the cost of having her car towed?

### **Background and Evidence**

Both Parties agree that this month to month tenancy started on May 01, 2009 and ended on January 31, 2010. Rent for this unit was \$1,075.00 per month and was due on the first of each

month. The tenant paid a security deposit of \$600.00. No move in or move out condition inspections were carried out. The tenant gave the landlords' agent her forwarding address by e-mail on January 15, 2010.

The tenant states on her application she claimed her security deposit was \$550.00 however she states she made a mistake and her deposit was \$600.00. The tenant states this was not returned to her within 15 days of giving the landlord her forwarding address in writing and she seeks double the security deposit.

The tenant testifies that her tenancy agreement included parking; however she was not given an opener to the underground garage until May 16, 2009. The tenant claims she e-mailed the landlords agent to express her concerns and was told he would look into getting her the garage opener. During that time she had to park on the street and on one occasion she parked two feet over a parking bay and her car was towed. The tenant has provided a copy of the invoice from the tow company and seeks to recover this amount of \$134.66 from the landlord.

The landlord testifies that he received the tenants forwarding address by e-mail and he states he mailed her a cheque for her security deposit on February 12, 2010 to the address he was given. The landlord states the tenant e-mailed again and told his agent she was no longer at that address and she gave the landlords' agent her new address. The landlord claims the tenant informed his agent that she had not received the cheque and requested the landlord to put a stop on it. The landlord states he stopped that cheque and sent the tenant a new cheque minus the bank charges of \$50.00 for stopping the first cheque. The landlord states this cheque was for \$500.00 and was cleared at his bank on April 01, 2010. The landlord states he thought the security deposit paid was \$550.00

The landlord testifies that when the previous tenant moved out they did not return the garage opener. This tenant was informed of this when she moved into the rental unit. The manager of the building was notified and a new garage opener was requested for this tenant. The landlord states the manager of the building assigned a designated parking spot to the tenant for her use until a new garage opener could be found. The landlord claims the tenant was at fault for not parking her car in this bay correctly when she was towed.

The tenant states that the first forwarding address she gave the landlord was her boyfriend's address and the first cheque never arrived at her boyfriend's house. The tenant confirms she did receive the second cheque for \$500.00.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Sections 23(4), 35(3) of the Act require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the Act. Consequently, s. 24(2)(a) and s. 36(2)(a) of the Act says that the landlord's right to claim against the security deposit for damages is extinguished. Consequently, I find the landlord is not entitled to keep any of the tenants' security deposit as he did not complete the inspection reports as required under the Act and has not filed an application to keep all or part of the security deposit.

The tenant has applied to recover double the security deposit however no evidence has been provided that the tenant gave the landlord her forwarding address in writing and she testifies that this address was given by e-mail. Section 88 of the Act determines the required methods of service for documents. E-mail is not an acceptable form of service to notify a landlord in writing of a tenants' forwarding address. Consequently, I find the tenant is not entitled to recover double her security deposit. The landlord has argued that he did return the security deposit to the tenant to the address she gave his agent and then after that cheque was sent she gave the landlord a different forwarding address again by e-mail. Both Parties now agree that the tenant has received \$500.00 of the security deposit. I find therefore the landlord must return the remainder of the security deposit of **\$100.00** to the tenant.

With regards to the tenants claim for compensation for her towing charges; I find the tenancy agreement does specify that the tenant will receive parking and as such the landlord did provide temporary parking for the tenant until such a time as a new garage opener could be obtained. The tenant did not mitigate her loss by ensuring she parking her car within this designated parking bay and was towed as a result of her own actions. Therefore, it is my decision that she is not entitled to recover the amount of \$134.66 from the landlord.

I further find as the landlord did attempt to return the tenants security deposit to the address provided initially by her that the tenant is only entitled to recover half her filing fee from the landlord as the full amount of the deposit was not returned.

The tenant is entitled to a Monetary Order to recover the remainder of her security deposit of **\$100.00** and **\$25.00** for half her filing fee.

#### Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$125.00**. The order must be served on the respondent 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 21, 2010.

---

Dispute Resolution Officer