

## **DECISION**

**Dispute Codes**      MNDC, MNSD, OLC, RPP, O

### **Introduction**

This is the Tenant's application for a Monetary order for compensation or loss under the Act; for return of the security deposit; and for an Order that the Landlord comply with the Act and return the tenant's personal property.

The parties gave affirmed testimony and this matter proceeded on its merits.

### **Issues to be Decided**

- Is the Tenant entitled to a Monetary Order as claimed?
- Should the Landlord be ordered to return the Tenant's belongings?

### **Background and Evidence**

#### **Facts that are not in dispute:**

- This tenancy started on February 25, 2010.
- There was no written tenancy agreement.
- The Tenant paid the Landlord rent in the amount of \$500.00 per month, which was paid directly to the Landlord by a third party.
- The Tenant paid a security deposit in the amount of \$250.00 at the beginning of the tenancy.
- On April 1, 2010, the Landlord gave the Tenant verbal notice that he had to move out of the rental suite so the Landlord could make renovations in the suite. No written Notice to End Tenancy for Landlord's Use was issued by the Landlord.
- The tenancy ended on May 31, 2010.

#### **The Tenant gave the following testimony:**

The Tenant testified that a rent cheque in the amount of \$500.00 was provided in error to the Landlord for June rent. The Tenant testified that the Landlord cashed the rent cheque. The Tenant is applying for a monetary award in the amount of \$500.00 in compensation for the cheque the Landlord cashed when he was not entitled to the money.

The Tenant testified that the Landlord did not return his security deposit and that the Tenant had not given the Landlord permission to keep any of the security deposit. The Tenant is applying for return of the security deposit in the amount of \$250.00.

The Tenant testified that the Landlord changed the locks on the rental unit with some of the Tenant's belongings still inside, including a wall unit, clothing and other personal property. The Tenant seeks an Order that the Landlord return his personal property. In

the alternative, the Tenant is seeking a monetary award in the amount of \$950.00 in compensation for those items. The Tenant acknowledged that he had no proof of the amount his possessions were worth and stated that his main concern was getting his security deposit back, along with the \$500.00 the Landlord had illegally kept.

The Landlord provided the following testimony:

The Landlord stated that he received a cheque from the third party on May 25, 2010, for June rent. He stated that since it was in the Landlord's name, the Tenant asked him to cash the cheque and to give the Tenant \$500.00 cash. The Landlord testified he did this as a favour to the Tenant. The Landlord testified that he returned the security deposit to the Tenant on June 15, 2010. The Landlord stated that he had witnesses, but they were not available to give testimony today because they were working.

The Landlord stated that the Tenant's belongings were sitting in the yard at the rental property and that he had asked the Tenant to pick them up.

The Landlord referred to documentary evidence he had provided of a document signed by the Tenant that indicates the Tenant received \$250.00 cash from the Landlord on June 15, 2010.

The Landlord testified that the Tenant did not pay rent for May because of his compensation for having to move out so the Landlord could make renovations to the rental unit. The Landlord testified that some of the Tenant's belongings were still in the rental unit and that he had not changed the locks to the rental unit.

The Tenant gave the following reply:

The Tenant stated that the document the Landlord refers to was signed in May, not in June, 2010. He stated that the document was an acknowledgement that the Tenant did not have to pay rent for the month of May, 2010, and that the security deposit had not been returned.

The Tenant denied asking the Landlord to cash the cheque and give the Tenant the cash. The Tenant stated that he was out on the street because the Landlord did not return the \$500.00 to the Tenant.

**Analysis**

The Tenant did not provide sufficient evidence to establish a monetary award for compensation for his belongings, or an explanation as to why his belongings remained at the rental unit. The Landlord stated in the Hearing that he had invited the Tenant to collect his belongings. Therefore, the Tenant's monetary claim with respect to his personal belongings is dismissed. The Tenant may contact the Landlord and arrange to

collect his belongings on 24 hour written notice. If he does so, the Landlord is ordered to make his belongings available for pick up.

The document entered in evidence by the Landlord is not dated. It consists of a photocopy of a rent cheque dated April 21, 2010, made payable to the Landlord. On the same piece of paper is a handwritten note, stating:

(Tenant) "has received \$500 cash – back – for moth of May. May rent not has been paid Damage deposit – not be refund. Paid cash June 15 \$250.00"  
(reproduced as written)

The document is signed by the Tenant. The statement "Paid cash June 15 \$250.00" is in a different pen than the remainder of the document, including the signature of the Tenant.

I find, on the balance of probabilities, that the document was written in May, 2010 and not in June, 2010. The document refers to the Tenant receiving the \$500.00 in compensation for the month of May. The copy of the cheque attached is dated April 21, 2010, which suggests it was rent for the month of May. The Landlord did not provide written statements from witnesses in evidence to confirm that the Tenant was refunded the \$500.00 for June rent. For these reasons, I prefer the Tenant's version of events with respect to whether he was paid back the \$500.00 for June's rent and the security deposit. Therefore, I hereby provide the Tenant with a Monetary Order in the amount of \$750.00 against the Landlord.

### **Conclusion**

I order the Landlord to make the Tenant's belongings available for the Tenant to pick up, on 24 hours written notice from the Tenant.

I hereby provide the Tenant with a Monetary Order against the Landlord in the amount of \$750.00. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims Court) 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 23, 2010.

---

Dispute Resolution Officer