

## **Decision**

**Dispute Codes:** MNR, MNSD, FF

### **Introduction**

This hearing dealt with 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent; retention of the security deposit; and recovery of the filing fee; ii) by the tenant for return of the security deposit; and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether either party is entitled to any of the above under the Act

### **Background and Evidence**

The tenant's unit was rented to her as a condition of employment. On the move-in condition inspection report it is noted that the tenant was entitled to possession of the unit effective March 15, 2009. Monthly rent in the amount of \$566.00 was due on the first day of each month, and was deducted from the tenant's regular pay cheque. A security deposit of \$283.00 was collected near the outset of tenancy.

The tenant's employment was terminated effective January 31, 2010. The landlord issued a 1 month notice to end tenancy for cause dated January 31, 2010. The date shown on the notice by when the tenant must move out of the unit is February 28, 2010. Reasons shown on the notice for its issuance are as follows:

Tenant's rental unit / site is part of an employment arrangement that has ended and the unit / site is needed for a new employee.

After the end of employment and the issuance of the 1 month notice to end tenancy, the tenant continued to reside in the unit until February 28, 2010. However, as the tenant's employment had been terminated effective January 31, 2010, a regular pay cheque was

not issued for February 2010 and, therefore, the landlord was unable to deduct rent from a regular pay cheque for February 2010.

The landlord takes the position that rent was due and payable for February 2010 at the beginning of that month. After the end of tenancy, the landlord therefore withheld repayment of the \$283.00 security deposit to the tenant in partial satisfaction of the rent due. In the result, the landlord seeks a monetary order as compensation for the outstanding balance of rent due for February 2010 in the amount of \$283.00.

However, the tenant claims that an agreement was reached between the parties whereby she could continue to reside in the unit for the month of February 2010 without paying rent. Accordingly, the tenant seeks the return of her security deposit. The landlord denies that such an agreement was reached.

### **Analysis**

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**, and provides in part as follows:

38(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Further, section 38(4) of the Act reads in part:

38(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...

Finally, section 38(6) of the Act provides:

38(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 1 month notice to end tenancy for cause dated January 31, 2010. In accordance with the notice, the tenant vacated the unit effective February 28, 2010. While the parties could not confirm exactly how the tenant provided the landlord with her forwarding address in writing, there is no dispute that the forwarding address was provided in writing in some manner or other on around the end of tenancy. Related evidence includes an invoice for cleaning in the unit dated February 26, 2010, which shows the same mailing address for the tenant used by her in her application for dispute resolution. Further, an invoice created by the employer dated March 17, 2010, shows the same mailing address for the tenant mentioned above.

There is no evidence that the tenant agreed in writing that the landlord may retain the security deposit at the end of tenancy.

As the landlord's application for dispute resolution was made on April 7, 2010, I find that the application was made beyond 15 days after the date the tenancy ended (February 28, 2010) or the date when the landlord received the tenant's forwarding address in writing (on or about February 28, 2010). Even if I were to conclude that the landlord received the tenant's forwarding address on March 17, 2010, which is the date of the landlord's invoice, as above, the landlord's application still falls outside the 15 day time limit provided by the Act. Accordingly, pursuant to the above statutory provisions I find that the tenant is entitled to the double return of her security deposit which is calculated to be \$566.00 (2 x \$283.00).

As for the landlord's claim for unpaid rent for February 2010, there is no evidence before me to support the tenant's position which is that by way of mutual agreement, that month's rent had been waived. In the result, I find that the landlord is entitled to monetary compensation in the amount of one month's rent, or \$566.00.

### **Conclusion**

Offsetting the respective entitlements, I hereby order that the landlord retain the tenant's full security deposit in satisfaction of both claims.

As both parties have achieved mixed success in their applications, I hereby dismiss their respective applications to recover the filing fee.

DATE: July 26, 2010

---