

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for the following:

- a monetary order for compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- return of the tenant's security deposit pursuant to section 38.

The landlord did not attend the hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that his application for dispute resolution was sent by registered mail to the landlord's agent and to the landlord. The tenant provided Canada Post Tracking Numbers to confirm this method of service delivery. The tenant said that the registered letter to the agent was returned as undeliverable as the agent no longer works for the landlord. He testified that the registered letter to the landlord appears to have been accepted. I accept the tenant's evidence that his application for dispute resolution was duly served to the landlord in accordance with the *Act*.

### Issues(s) to be Decided

Is the tenant entitled to a monetary order for the loss of his personal property? Is the tenant entitled to the return of his security deposit?

### Background and Evidence

The tenant testified that he moved into the rental premises on October 31, 2009 on a month-to-month lease. He said that he was paying \$450.00 per month in rent. He said

that the landlord continued to hold the \$225.00 security deposit he paid on October 31, 2009.

The tenant gave sworn testimony that he returned to the rental premises after being away for a few days on January 1, 2010. He found the locks changed, another tenant in his rental premises, and his personal property outside the building. He said that much of his personal property was missing at that time. As part of his application for dispute resolution, he provided a list of 15 items which he said were lost as a result of the landlord's actions in placing these items outside the rental premises. He submitted into evidence photographs of some of his possessions placed outside the rental premises. He said that people on the street apparently took these items because the landlord had not secured them. He maintained that he received no Notice to End Tenancy from the landlord, nor was an Order of Possession obtained by the landlord. He asked for a monetary order from the landlord in the amount of \$2,305.00 to compensate him for his missing personal property. He also applied for the return of his security deposit.

#### Analysis

#### Application for Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant, in this case the tenant, must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party.

In the absence of any evidence from the landlord to the contrary, I accept the tenant's claim that the landlord was responsible for the loss of his personal property. I accept the tenant's undisputed evidence regarding the items lost and their value. I grant a monetary order in the tenant's favour in the amount of \$2,305.00. On the basis of the

tenant's testimony that the agent is no longer involved in these rental premises, I have not included the agent's name in the monetary order.

#### Application for Return of Tenant's Security Deposit

Section 38 of the *Act* establishes the process whereby security deposits are returned to tenants. The landlord is required to return a tenant's security deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing.

Although the tenant's agent testified that she had requested the return of the security deposit from the landlord, the tenant and his agent said that they had not sent the landlord anything in writing asking for the return of his security deposit and an address where the security deposit could be sent. The tenant has not yet complied with these provisions of section 38(1) of the *Act*. As such, I do not find that the landlord has been late in returning the security deposit to the tenant and do not include a monetary award for this item in the monetary order.

#### Conclusion

I grant the tenant a monetary order in the amount of \$2,305.00. I dismiss the tenant's application for return of his security deposit.

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.