

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for return of all of her security deposit plus interest.

Both parties attended the hearing and were given an opportunity to be heard, to present evidence and to make submissions. The tenant testified that she sent her application for dispute resolution package to the landlord by registered mail on June 4, 2010. She provided the Canada Post Tracking Number. The landlord confirmed that she received the tenant's application for dispute resolution and evidence packages. I accept that the tenant served the landlord with her application for dispute resolution in accordance with the *Act*.

### Issues(s) to be Decided

Is the tenant entitled to receive a monetary order?

### Background and Evidence

The parties confirmed that this tenancy commenced on September 1, 2006. The fixed term one-year tenancy was converted to a month-to-month lease at the expiration of the initial one-year tenancy agreement. The tenant paid \$860.00 in rent on the first of each month. The tenant paid a \$430.00 security deposit on September 1, 2006. The parties agreed that the tenant vacated the rental premises on March 17, 2010.

The tenant testified that she included her forwarding address in her February 2010 letter to the landlord advising that she was planning to end her tenancy at the end of March 2010. The landlord denied having received the tenant's forwarding address until the first week of April 2010. The parties agreed that the landlord sent the tenant a cheque

for \$281.00 on April 12 or April 13, 2010 in response to the tenant's request for the return of her security deposit. The landlord confirmed that she reduced the amount of the tenant's security deposit by \$149.00 to reflect cleaning that was required for the rental premises and the drapes. Since the cheque stated that this was for the "full settlement" of the security deposit, the tenant has not cashed this cheque, pending the outcome of this hearing.

### Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord **must** pay the tenant double the amount of the deposit (section 38(6)). Further, if the landlord fails to perform a condition inspection at move-in and move-out the landlord may not make a claim against the deposit.

The evidence shows that the tenant paid a security deposit on or about September 1, 2006. Condition Inspection reports were not submitted in evidence. Both parties confirmed that a move-out condition inspection report was not completed. The landlord testified that she was ill at the time the tenant moved out and that someone else was looking after her rental property at that time.

I am satisfied that the tenant did supply the landlord with her forwarding address and that the landlord did not return the full security deposit, nor did she file an application for dispute resolution to retain a portion of the tenant's security deposit.

I find that the landlord did not comply with Section 38 of the *Act* and she must pay the tenant double the security deposit. The original deposit totaled \$430.00. Interest payable from that date would increase the amount to be returned to the tenant by \$13.75 to \$443.75. Doubling the entire deposit plus interest would now result in a

monetary Order being made in favour of the tenant in the sum of \$873.75. However, the tenant received a cheque from the landlord in the sum of \$281.00 and has not cashed it. I find that the landlord should not be penalized for the tenants' decision not to negotiate this cheque. Therefore, as the landlord did return part of the deposit within 15 days of receipt of the forwarding address or the end of tenancy, I double only the balance that she did not return. I double the amount owing of \$149.00 for a total of \$298.00 plus interest on the original amount owing of \$13.75.

I issue an Order in favour of the tenant in the sum of \$311.75 (\$298.00 + \$13.75). This is in addition to the landlord's cheque of \$281.00 which I authorize the tenant to cash in partial settlement of her security deposit.

### Conclusion

I grant the tenant a monetary Order in the amount of \$311.75.

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*.