

## **DECISION**

Dispute Codes      OLC MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain an Order to have the Landlords comply with the Act and a Monetary Order for the return of all of the security deposit, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Landlords for this application.

Service of the hearing documents, by the Tenant to the Landlords, was done in accordance with section 89 of the *Act*, sent via registered mail on May 10, 2010. The Landlords confirmed receipt of the hearing package.

The Landlords and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

Is the Tenant entitled to an Order to have the Landlords comply with the Act in accordance with section 62 of the *Residential Tenancy Act*?

Is the Tenant entitled to a Monetary Order in accordance with sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The undisputed testimony was the Tenant viewed the rental unit on March 19, 2010. Then on March 20, 2010 the Tenant returned and entered into a written tenancy agreement for a fixed term tenancy effective April 1, 2010 and set to switch to a month

to month tenancy after April 1, 2011. Rent was to be payable on the first of each month in the amount of \$800.00. The Tenant paid a security deposit of \$400.00 on March 2010, 2010 and first month's rent in the amount of \$800.00 with a cheque dated April 1, 2010.

The Tenant testified that after entering into the written tenancy agreement she changed her mind. She felt the Landlords were looking for a long term tenant and after considering that there were no windows in part of the unit she stated she did not feel safe about moving in to the unit. She could not remember the exact date when she called the Landlords to inform them that she would not be taking the rental unit but thought it was sometime during the last week of March 2010. She sent the Landlords written notice on April 14, 2010, of her forwarding address and to request the return of her security deposit and April's rent payment.

The Landlords testified and advised that after entering into the tenancy agreement they did not hear from the Tenant so they made several attempts to contact her to arrange a move-in inspection and to hand over the keys. They were in touch with her via telephone on March 30, 2010, at which time the Tenant told the Landlords she would be moving into the rental unit on April 2, 2010. The Landlords confirmed that they would be home that day and would arrange for her move in when she arrived. The Landlords stated that they did not hear from the Tenant again until they received her letter on April 13, 2010, which advised the Landlords she was not moving into the unit. The Landlords returned the security deposit of \$400.00 to the Tenant however did not return the April rent payment. The unit was re-rented May 1, 2010.

The Tenant confirmed she received the refund of the security deposit, prior to filing her application for dispute resolution, and that the other details the Landlords mentioned were likely accurate. The Tenant has requested to amend her application to seek only the return of the \$800.00 she paid for April 2010 rent and to recover the cost of the \$50.00 filing fee.

### Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 45 of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the landlord receives the notice and is not earlier than the date specified in the tenancy agreement as the end of the fixed term. In this case the fixed term tenancy was not set to expire until April 1, 2011; therefore the Tenant's tenants notice should have been issued February 28, 2011 to end the tenancy April 1, 2011.

Section 38(1) of the Act stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet deposit to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this

case the tenancy agreement ended in violation of the Act effective April 13, 2010, when the Landlords received the Tenant's notice and forwarding address and the security deposit was returned within the required fifteen days, in accordance with the Act.

Based on the aforementioned I find the Tenant has failed to comply with the Act and has failed to provide sufficient proof to support her claim. Therefore I dismiss the Tenant's claim.

The Tenant has not been successful with her claim and I decline to award recovery of the filing fee.

#### Conclusion

I HEREBY DISSMISS the Tenant's application, without leave to reapply.

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: September 20, 2010.

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Dispute Resolution Officer