

## **Decision**

### **Dispute Codes:**

MNSD, MNDC, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of double the security deposit retained by the landlord and a monetary order for the equivalent of one-month compensation for a Notice issued under section 49 of the Act to end the tenancy for landlord's use and a monetary order for damages.

Although served with the Notice of Hearing and application by registered mail sent on July 9, 2010, the landlord did not appear.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act. This determination depends upon the following:
  - Did the tenant pay a security deposit and pet damage deposit?
  - Did the tenant furnish a forwarding address in writing to the landlord?
- Was the tenant credited with the equivalent of one month compensation pursuant to section 51(1) after being issued a Two-Month Notice for landlord use?
- Is the tenant entitled to compensation for damages and loss under section 7 of the Act?

The burden of proof is on the applicant to show that the deposit was paid and that the forwarding address was given.

### **Background and Evidence**

The tenant testified that the tenant had moved into the unit on November 1, 2006 and paid a security deposit of half a month rent in the amount of \$387.50. The tenant testified that they received a Two-Month Notice to End Tenancy for Landlord Use dated April 30, 2010 and the tenant moved out on May 1, 2010 providing a forwarding address to the landlord on June 4, 2010. The tenant testified that the landlord cashed the tenant's May rent cheque and failed to give the tenant the equivalent of one month compensation owed under the Act. The tenant is claiming compensation of \$750.00. The tenant testified that the landlord also failed to return the tenant's security deposit and the tenant is claiming the return of double the deposit in the amount of \$750.00 and \$12.07 interest. In addition to the above, the tenant is claiming compensation for lost food due to a refrigerator malfunction that was not addressed by the landlord in a timely fashion during the tenancy. The tenant testified that their refrigerator failed and despite reporting it to the landlord, the landlord did not repair or replace it. The tenant stated that they lost a substantial amount of food and were forced to use a neighbour's refrigerator for a period of time. The tenant testified that when it became clear that the landlord was not going to intervene to restore the appliance, they purchased a used refrigerator and were compensated by a corresponding rent reduction for the expenditure. The tenant is claiming \$100.00 in damages.

### **Analysis**

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the tenant's written forwarding address has been received, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or an order has been obtained by the landlord after the end of the tenancy to retain the amount for rent or damages.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the

tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the tenant's security deposit with interest was \$387.50 and that under the Act the tenant is entitled to \$762.07. This represents \$750.00 double the deposit, plus \$12.07 interest on the original deposit.

In regards to the claim for \$750.00 compensation section 51(1) requires that a tenant receive the equivalent of one month compensation by the landlord with a Notice to End Tenancy for Landlord Use. I find that the landlord did not comply with this and therefore, I find that the tenant is entitled to be paid \$750.00 by the landlord.

In regards to the tenant's claim for damages due to the loss of refrigeration for a period of time, I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the tenant.

I find that under section 32 of the Act a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. Repair and maintenance of appliances are the landlord's responsibility under the Act. I accept the tenant's testimony that they were deprived of a refrigerator for several weeks and that they mitigated their loss by taking action to find a used appliance when the landlord did not act. Accordingly, I grant the tenant \$100.00 compensation for the lost food. I also find

that the tenant is entitled to a retro-active rent abatement of 10% of the rent for the month during which the loss of use of the refrigerator occurred and for the inconvenience of replacing it on behalf of the landlord. Accordingly, additional compensation of \$75.00 is granted for the devalued tenancy.

### **Conclusion**

I hereby issue a monetary order to the tenant in the amount of \$1,707.37 comprised \$750.00 for double the rent deposit, \$12.07 interest, \$750.00 compensation under section 51 of the Act, \$100.00 for lost food due to refrigerator failure, \$75.00 rent abatement for devalued tenancy and the \$50.00 cost of this application. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) 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: November 2010.

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Dispute Resolution Officer