

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This is an application by the Tenant for a monetary order for the return of the security deposit and compensation. The Tenant is also seeking the recovery of the filing fee. Both parties attended by conference call and gave affirmed testimony.

The Landlord joined the hearing late and requested an adjournment. The Landlord stated that the back surgery was a scheduled operation a couple of months prior in October 2010. The Landlord did not provide any reason why he did not file any evidence or request an adjournment prior to the hearing date since he received the hearing notice at the end of July 2010. The Landlord has not filed any applications for dispute resolution regarding this rental unit. The Landlord's request for an adjournment is denied.

### Issues(s) to be Decided

Is the Tenant entitled to a monetary order?

### Background and Evidence

The Landlord was served with the hearing notice and the Tenant's evidence package by registered mail on July 29, 2010. The Tenant has submitted that the Landlord gave notice on May 31, 2010 to end the tenancy effective June 30, 2010 claiming that he required the rental unit for personal use. The Landlord's relatives were to move into the rental unit at the beginning of July as shown in the Landlord's letter entered as evidence by the Tenant. The Tenant has also entered a letter dated June 13, 2010 referring to section 49 of the RTA. The Tenant has submitted a handwritten note dated July 2, 2010 with the Tenant's forwarding address. The Tenant states that he has contacted the Landlord on more than one occasion requesting the return of the security

deposit. The Tenant indicates that on July 27, 2010 that a request was made for the return and the Landlord stated that he would not be returning the security deposit. Both parties agree that the monthly rent was \$925.00 payable on the 1<sup>st</sup> of each month and that a \$450.00 security deposit was paid on August 29, 2007 at the start of the tenancy. The Landlord has stated that no condition inspection report for the move-out was done. There is no evidence of a move-in or move-out condition inspection report provided by either party. The Tenant has stated he was never presented with a condition inspection report.

### Analysis

The Landlord has not disputed or offered any evidence to contradict the Tenant's evidence. I am satisfied that the Landlord was properly served with the hearing notice and evidence package by registered mail.

Section 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 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 deposit. Subsection (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 deposit, or both, as applicable.

I am satisfied that the Tenant has proven that he has given the Landlord a written notice of his forwarding address on July 2, 2010. The Landlord has not made an application for dispute resolution claim against the security deposit. The Landlord has failed to return the security deposit within 15 days as per section 38 of the Act. The Landlord did not dispute any of these facts. I find that the Landlord has failed to comply with the Act and must pay the tenant double the amount of the security deposit totalling \$900.00.

The Tenant is also seeking compensation under section 49 of the Act. The Tenant was served with a notice to end tenancy, but this notice did not comply with section 52.

Section 52 In order to be effective, a notice to end tenancy must be in writing and must (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Although the Tenant complied with the notice, this notice has not complied with section 52 of the Act. As such, I must dismiss this portion of the Tenant's application.

As the Tenant has been partially successful in his application, I order that the Tenant is entitled to the recovery of the \$50.00 filing fee.

### Conclusion

The Tenant is granted a monetary order for \$950.00.

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: December 17, 2010.

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Dispute Resolution Officer