

## **DECISION**

Dispute Codes        MNSD, OLC, FF

### Introduction

This hearing dealt with an application by the tenant for return of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issues to be Decided

Is the tenant entitled to any of the above under the Act.

### Summary of Background and Evidence

This tenancy started May 1, 2009 with rent of \$450.00, the tenant paid a security deposit of \$225.00.

The tenant vacated the rental unit July 2010 and a move out inspection was completed with the tenant and landlord present. The tenant stated that he had left numerous phone messages and emails for the landlord requesting the return of his security deposit. The tenant testified that on August 24, 2010 he sent the landlord his forwarding address in writing and requested return of the security deposit. The tenant stated that the landlord BW conducted the move-out inspection with him upon vacancy of the rental unit.

The tenant is asking for return of double the security deposit in this application.

BW calling in for the landlord and named in the application as a landlord is disputing that he ever was a landlord. BW contends that he shared the upper unit living space with the landlord who held the tenancy agreement with the property owner but that he did not act in the capacity of landlord. BW stated that he agreed to moving in upstairs with CR when she suggested that she could sublet the basement suite. BW remains a tenant in the upper unit and CR now resides in the lower unit.

BW stated that CR who is named as the other landlord in this application was recently charged with fraud as she was taking security deposits from prospective tenants at this location and then advising them they could not have the suite due to an emergency yet did not return their security deposit; CR has had 26 counts of fraud filed against her. BW contends that he told the tenant on the day he was vacating the rental unit that CR would be the one returning the tenant's security deposit. BW stated that he did not conduct the move-out inspection with the tenant.

The tenant believes that BW did perform duties as a landlord as for the last few months of his tenancy the tenant paid his rent directly to BW.

### Analysis

Based on the documentary evidence and undisputed testimony of the tenant, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit. The matter of whether or not BW is liable for return of the security deposit may be a matter between BW and CR that needs to be addressed in civil court.

I find that the tenant has established a claim for \$450.00.

The tenant is also entitled to recovery of the \$50.00 filing fee.

### Conclusion

I find that the tenant has established a monetary claim for \$450.00 in return of double the security deposit. The tenant is also entitled to recovery of the \$50.00 filing fee.

A monetary order in the amount of **\$500.00** has been issued to the tenant and a copy of it must be served on the landlord. If the amount is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: January 31, 2011

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Residential Tenancy Branch