

## **DECISION**

Dispute Codes        MND, MNSD, FF  
                              MNSD, FF

### Introduction

This hearing dealt with cross applications from the landlord and tenant. The landlord's application is for a monetary order for damages, to keep all or part of the security deposit and recovery of the filing fee. The tenant's application is for return of the security deposit, to order the landlord to comply with the Act and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issues to be Decided

Is either party entitled to any of the above under the Act.

### Summary of Background and Evidence

This tenancy started September 2009 with rent of \$1,000.00, the tenant paid a security deposit of \$500.00.

The landlord testified that he had not served the tenant or the tenant's representative with his hearing documents as a staff person at the Residential Tenancy Branch office stated that they would provide the tenant with the hearing documents. The landlord did not provide the tenant or the tenant's representative with a copy of the evidence package that was submitted to the Residential Tenancy Branch. The hearing document package provided to the landlord by the Residential Tenancy Branch would have included a fact sheet regarding the hearing process, service of documents and rules concerning submission of evidence.

The landlord testified that neither a move-in or move-out inspection was completed regarding this rental unit. The landlord has submitted receipts and is making a claim for \$2593.88 in damages to the rental unit.

At the onset of the hearing the tenant's representative testified that he was not in receipt of the notice of hearing documents for the landlord's application or the evidence submitted to the Residential Tenancy Branch by the landlord.

The tenant's representative stated that the rental unit had been professionally cleaned and has submitted a receipt for the cleaning costs. The tenant's agent stated that he had completed a final walk through of the rental unit and felt it to be in acceptable

condition. The tenant's representative testified that the landlord was provided with the forwarding address for return of the security deposit in writing on July 29, 2010 and that to date the landlord has not returned the security deposit. The tenant's representative is requesting double the security deposit in this application.

### Analysis

#### Residential Tenancy Act **Section 89 speaks to Special rules for certain documents**

(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

#### Residential Tenancy Policy **Guideline 12 speaks to Service Provisions**

##### **13. PARTIES NOT SERVED**

Where one or more parties on an application for arbitration has not been served, the arbitrator's Order will indicate this and will dismiss, or dismiss with leave to reapply, the application involving the party not served.

Based on the documentary evidence and testimony I find that the tenant was not properly served with the notice of hearing documents or evidence by the landlord. The landlord's application is hereby dismissed without leave to reapply.

The landlord is not entitled to recovery of the \$50.00 filing fee.

#### Residential Tenancy Act **Section 36 speaks to Consequences for tenant and landlord if report requirements not met**

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and
- (b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,
  - (b) having complied with section 35 (2), does not participate on either occasion,
- or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

**Residential Tenancy Act Section 38 speaks to Return of security deposit and pet damage deposit**

- (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 damage 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 damage deposit.

Based on the documentary evidence and undisputed testimony of both parties, I find on a balance of probabilities that the tenant has met the burden of proving that he has grounds for return of double the security deposit. The landlord did not conduct a move-in or move-out inspection with the tenant and did not return the security deposit or make application to keep the security deposit within the required time limit as set out in the Act.

I find that the tenant has established a monetary claim for \$1000.00 in return of double the security deposit.

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

### Conclusion

The landlord's application is hereby dismissed without leave to reapply.

The tenant has established a monetary claim for \$1000.00 in return of double the security deposit and is entitled to recovery of the \$50.00 filing fee.

A monetary order in the amount of **\$1050.00** 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 4, 2011

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Dispute Resolution Officer