

## **DECISION**

### **Dispute Codes:**

MNSD, O, FF

### **Introduction**

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for the return of the security deposit - Section 38
2. A Monetary Order for loss - Section 67;

Both parties attended the hearing and were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present

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

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

This tenancy began on April 01, 2010. The tenant has since vacated. Rent had been \$800 per month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$400. The parties do not dispute that the tenant secured a room-mate for the rental unit, which the landlord determined was a sublet or assignment without their consent, and on August 01, 2010 gave the tenant a 1 Month Notice to End Tenancy for Cause. The tenant complied with the Notice to End and claims she vacated, along with her belongings, on September 01, 2010 – leaving the room-mate in the rental unit. The landlord testified that subsequent to the respondent tenant vacating, the room-mate vacated the rental unit on the following day - moving into another rental unit on the same residential property. The landlord testified the result was that an abundance of personal belongings were left behind in the rental unit – which the landlord testified was cause to charge the respondent tenant / or keep, or

otherwise withhold full rent of \$800 for the month of September 2010. The parties do not dispute that the tenant provided the landlord with a forwarding address over the telephone subsequent to vacating the unit, but failed to provide a written forwarding address.

The testimony is that the landlord did not arrange, or otherwise accommodate, a move out inspection before, on, or shortly after the effective date of the Notice to End, and did not extend to the tenant at least 2 opportunities for the inspection. The landlord testified that they were waiting for the tenant to remove all items from the rental unit before conducting an inspection. Regardless, the landlord did eventually perform an end of tenancy inspection on September 14, 2010 on their own, and determined to retain an amount for damages to the unit - eventually returning \$100 to the tenant once provided with a written forwarding address on the tenant's application for dispute resolution. This hearing did not have benefit of the landlord's condition inspection report.

The tenant seeks the return of the balance of the security deposit and return of rent paid for September 2010.

### **Analysis**

On preponderance of the testimony of both parties I find that the provisions in the Act respecting the security deposit in this matter state that the landlord was at liberty to retain all of the security deposit until such time that the tenant provided a written forwarding address. The landlord determined to return \$100. As the landlord did not comply with Section 35 Condition Inspection: end of tenancy, the landlord's right to make a claim against the security deposit is extinguished. Section 35(2) and Section 36(2) state as follows: **(emphasis for ease)**

#### **Condition inspection: end of tenancy**

- 35** (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

#### **Consequences for tenant and landlord if report requirements not met**

- 36** (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.

Effectively, the landlord is not entitled to the security deposit and is obligated to return the full amount of the original deposit. The tenant is not entitled to the *doubling* of the deposit provisions in the Act. Accordingly, I find that the tenant is entitled to the return of the balance of their security deposit in the amount of **\$300**.

The landlord determined to end the tenancy and issued a Notice to End. The tenant did not dispute the notice and vacated as required by the Notice. I find that the tenant was responsible and obligated to ensure that the rental unit was vacated by all persons claiming possession or occupation through them : the room-mate and all belongings – regardless to whom they belonged. In addition, I find that the landlord was at liberty to treat all remaining belongings as if abandoned personal property, or otherwise have them removed, and claimed the resulting costs and charges by filing for dispute resolution. The landlord was additionally at liberty to file for dispute resolution to recover any applicable and reasonable amount for the resulting over-holding of the rental unit by the tenant and the room-mate, beyond the effective date of the Notice to End. The landlord has not made such an application, and may still be at liberty to do so. However, the landlord was not at liberty to charge, or otherwise keep the entire month's rent for September 2010. As this application is not the landlord's claim for such costs, I grant the tenant's request for recovery of the **\$800** held / retained by the landlord as rent. The tenant's entitlement is in the resulting sum of **\$1100**.

### **Conclusion**

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$1100**. If necessary, this order may be filed in the Small Claims Court 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*.