

## **Review Decision**

**Dispute Codes:** MNSD, FF

### **Introduction**

A hearing was originally held on November 19, 2010, in response to the tenant's application for the double return of his security deposit, in addition to recovery of the filing fee. The tenant attended the hearing, however, the landlord did not.

A decision was issued on November 19, 2010, the same date as the hearing, pursuant to which a monetary order of \$550.00 was issued in favour of the tenant [(\$250.00 x 2) **double the security deposit + \$50.00 filing fee**].

Thereafter, on December 8, 2010, the landlord filed an application for review of the decision and order on the basis of all three grounds set out in section 79(2) of the Act. In the result, by way of decision dated December 9, 2010, the dispute resolution officer granted a review principally on the basis of the landlord's claim that he had not been served with the application for dispute resolution and the notice of hearing (the "hearing package").

Section 82 of the Act speaks to **Review of director's decision or order**, and provides in part as follows:

82(2) The director may conduct a review

(a) based solely on the record of the original dispute resolution proceeding and the written submissions of the parties, if any,

(b) by reconvening the original hearing.

(3) Following the review, the director may confirm, vary or set aside the original decision or order.

In the decision dated December 9, 2010, the dispute resolution officer stated, in part:

...I order this proceeding be reconvened at a future date for a new hearing in accordance with Section 82(2)(c). I include in the tenant's decision copies of the Notice of Reconvened Hearing that the tenant must serve on the landlord within **3 days** of receipt of this decision.

### **Issues to be decided**

- Whether the tenant is entitled to the double return of the security deposit and recovery of the filing fee

### **Background and Evidence**

Following from all of the above, this hearing was scheduled to commence at 11:30 a.m. on January 6, 2011. The tenant was present at that time and gave affirmed testimony. The tenant testified that he served the landlord in person at his home with the Notice of Reconvened Hearing on or about December 15, 2010. Despite this, the landlord did not attend.

Documentary evidence submitted by the landlord includes, but is not limited to, a copy of the tenancy agreement pursuant to which the month-to-month tenancy commenced January 1, 2010. Monthly rent was \$500.00 and a security deposit in the amount of \$250.00 was collected. The first month's rent in combination with the security deposit was paid by the tenant to the landlord by cheque dated December 21, 2009 in the amount of \$750.00. A copy of this cheque was included in the landlord's evidence.

The tenant testified that the tenancy came to an end mainly as a result of the landlord's concern that the tenant's brother had moved into the unit with him. The tenant's recollection is that he vacated the unit on or about May 30, 2010. Whichever the exact date, the tenant states that the landlord was a witness to his moving some of his possessions out of the unit.

The tenant testified that he provided his forwarding address to the landlord in writing and personally delivered it to the landlord in care of one of the landlord's daughters on

or about June 14, 2010. There is no copy of the tenant's correspondence to the landlord in this regard in evidence.

Documentary evidence submitted by the landlord includes a letter written by each of his two daughters in which they each state, in part, that they received no documentation from the tenant. However, neither daughter was present to testify at the hearing.

### **Analysis**

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant during the hearing, I find on a balance of probabilities that the tenant provided the landlord with his forwarding address in writing on about June 14, 2010. As the landlord neither returned the tenant's security deposit nor filed an application for dispute resolution within 15 days following his receipt of the tenant's forwarding address, pursuant to section 38 of the Act, I find that the tenant has established entitlement to the double return of his security deposit, in addition to recovery of the filing fee in the total amount of \$550.00.

### **Conclusion**

Following from all of the above, the original decision and order dated November 19, 2010 are hereby confirmed.

DATE: January 6, 2011

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Dispute Resolution Officer