

## **DECISION**

Dispute Codes      MNSD, RR, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38;
- an order to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

### Issues(s) to be Decided

Is the tenant entitled to obtain a return of his security deposit? Is the tenant allowed a monetary award to reduce his rent for services agreed to (i.e., cable television) but not provided during a portion of this tenancy? Is the tenant entitled to recover his filing fee for this application from the landlord?

### Background and Evidence

This tenancy commenced on August 11, 2007. Monthly rent at the time the tenant vacated the rental premises at the end of June 2010 was set at \$850.00. The parties agreed that cable television was included in the tenant's monthly rent. The landlord continues to hold the tenant's \$375.00 security deposit plus interest.

The parties agreed that the tenant provided written notice of his forwarding address to the landlord on or about July 29, 2010 for the purposes of obtaining a return of his security deposit. The landlord testified that she did not return any portion of the security deposit to the tenant nor did she file an application for dispute resolution to seek authorization to retain that deposit.

The tenant applied for a return of his security deposit and a monetary award of \$25.00 to compensate him for his loss of cable television for approximately five weeks in the summer of 2010. The landlord confirmed that the tenant was without cable television for an undetermined period of time during that summer when she switched back from satellite television to Shaw Cable TV service. Since cable for the rental suite is included in her overall cable bill for the property, she did not know the exact cost of cable television for the five-week period claimed by the tenant.

### Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)).

In this case, both parties agree that the landlord did not return the tenant's security deposit plus interest within 15 days of receiving written notice of the tenant's forwarding address.

The following provisions of Policy Guideline 17 of the Residential Tenancy Policy Guidelines would seem to be of relevance to the consideration of this application:

### *RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION*

*3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;...*

I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address. I issue a monetary order in the tenant's favour amounting to double the security deposit with interest calculated on the original amount.

I also find that the tenant is entitled to a monetary award of \$25.00 as a rent reduction for the period when he did not receive cable television service the landlord had committed to provide in their tenancy agreement.

Having been successful in this application, I find further that the tenant is entitled recover the \$50.00 filing fee paid for this application.

### Conclusion

I issue a monetary Order in the tenant's favour in the following terms which allows the tenant to recover double his security deposit plus interest payable on the amount of the original deposit, as well as monetary awards for rent reduction and for recovery of his filing fee for this application.

Item	Amount
Security Deposit Paid August 11, 2007 plus interest ( \$375.00 + \$7.86 = \$382.86)	\$382.86
Failure to Return Security Deposit Owing	375.00
Rent Reduction for Lack of Cable TV	25.00
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$832.86</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.