

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

At the commencement of this hearing, the tenant clarified his application was for a tenancy for a manufactured home site and a manufactured home he had rented from the landlord. As such and in accordance with section 4 (a) of the *Manufactured Home Park Tenancy Act*, his application was incorrectly identified as being made pursuant to the *Manufactured Home Park Tenancy Act*. In accordance with the provisions of subsection 57(3)(c) of the *Manufactured Home Park Tenancy Act* and subsection 64(3)(c) of the *Residential Tenancy Act*, I amended the tenant's application to indicate that it was made pursuant to the *Residential Tenancy Act* (the *Act*).

The tenant applied for:

- authorization to obtain a return of double his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant and his wife attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord did not attend although I waited until 11:14 a.m. in order to give him an opportunity to participate in this hearing. The tenant gave sworn testimony that he sent the landlord a copy of his dispute resolution hearing package by registered mail on October 28, 2010. The tenant provided a Canada Post Tracking Number to confirm this mailing. I am satisfied that the tenant served this hearing package to the landlord in accordance with the *Act*.

### Issues(s) to be Decided

Is the tenant entitled to obtain a return of double his security deposit plus interest? Is the tenant entitled to recover his filing fee from the landlord?

### Background and Evidence

The tenant commenced renting a manufactured home and manufactured home site from the previous owner of this manufactured home park on October 1, 2004. When the tenant vacated the rental unit at the end of June 2010, monthly rent was set at \$890.00. The tenant said that the landlord continues to hold his \$375.00 security deposit plus interest paid on or about October 1, 2004.

The tenant testified that he provided the landlord with his forwarding address in writing when they conducted their joint move-out condition inspection on June 28, 2010. He

said that he has tried to contact the landlord a number of times to obtain a return of his security deposit. The tenant requested a return of double the amount of his security deposit pursuant to section 38 of the *Act*.

### 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 in 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) of the *Act*, 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) of the *Act*). With respect to the return of the security deposit, the triggering event is the provision by the tenant of the forwarding address.

Based on the undisputed evidence of the tenant, I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address in writing. The tenant is therefore entitled to a monetary order amounting to double that deposit with interest calculated on the original amount only. Since the tenant has been successful in his application, I allow him to recover his \$50.00 filing fee from the landlord.

### Conclusion

I issue a monetary Order in the tenant's favour in the following terms which provides the tenant double his security deposit plus interest calculated on the original amount plus the recovery of his filing fee.

Item	Amount
Security Deposit paid on October 1, 2004	\$375.00
Double Security Deposit	375.00
Interest on original amount paid from date security deposit paid to date of this order	13.27
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$813.27</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*.

