

## **DECISION**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under section 38 for double the deposit. The application is inclusive of an application for recovery of the filing fee for the cost of this application. Both, the tenant and the landlord were represented at today's hearing.

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

Is the tenant entitled to double the security deposit amount claimed?

### **Background and Evidence**

The undisputed facts before me, under sworn testimony by both parties, are as follows.

The tenancy began on May 21, 1999 and ended on August 31, 2010. The landlord collected a security deposit of \$255 at the outset of the tenancy. There was no move in inspection conducted at the outset. There was no mutual move out inspection conducted at the end of the tenancy and the landlord did not record the results of the inspection they conducted after the tenant vacated the rental unit. The parties agree and testified that the landlord received the tenant's forwarding address in writing on August 28, 2010. The landlord testified that they did not make an application for dispute resolution to retain the tenant's security deposit despite having determined that the tenant did not leave the rental unit in a state acceptable to them. The landlord claims they have evidence that the tenant damaged the rental unit.

## **Analysis**

The landlord's claims of damage to the rental unit are not matters that are relevant to this hearing – although it is available to the landlord to file for dispute resolution should they determine they have evidence to support their claims for damage.

On preponderance of the evidence and the testimony advanced in the hearing, and on the balance of probabilities, I have reached a decision.

**Section 38(1)** of the Act provides as follows (**emphasis for ease**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$255 and was obligated under section 38 to return this amount together with the \$26.26 in interest which had accrued. The amount which is doubled is the \$255 original amount of the deposit before interest. As a result I find the tenant has established an entitlement claim for **\$536.26** and is further entitled to recovery of the **\$50** filing fee for a total entitlement of **\$586.26**.

### **Conclusion**

I grant the tenant an order under section 67 for the sum of **\$586.26**. 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*.