

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

The landlord testified that she never received notice of this hearing from the tenant but rather that she was informed about this hearing when she contacted the Residential Tenancy Branch regarding another matter.

The landlord acknowledges receiving the tenant's evidence that he sent on February 16, 2011 but states that she did not receive any other documentation from the tenant. The tenant testified that he forwarded the landlord notice of this hearing via registered mail on December 20, 2010 and on review of the tracking information Canada Post indicates the landlord signed for and received this package on January 5, 2011.

Based on the above, I find that the landlord has been served with the notice of hearing documents in accordance with Section 89 of the *Residential Tenancy Act (Act)*.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

### Background and Evidence

The parties agree the tenancy began on July 1, 2004 as a month to month tenancy for a monthly rent of \$1,300.00 due on the 1<sup>st</sup> of each month and a security deposit of \$550.00 was paid on June 20, 2004. The tenancy ended when the tenants vacated the rental unit on August 7, 2010, resulting from the landlord ending the tenancy for her own use. The tenant testified he provided the landlord with his forwarding address prior to the end of the tenancy.

The landlord had submitted an Application for Dispute Resolution on August 20, 2010 to claim against the security deposit and for additional compensation for damage to the rental unit. A hearing was conducted on December 20, 2010 by conference call and neither party attended. The matter was dismissed at that time. The landlord has subsequently applied for a review of that decision.

The tenant seeks compensation in the amount of \$3,788.94 broken down as follows:

Description	Amount
Return of Security Deposit	\$550.00
Interest on Security Deposit	\$38.94
Section 38(6) compensation to double the security deposit	\$550.00
2 Months Rent for loss of use	\$2,600.00
<b>Total</b>	<b>\$3,788.94</b>

The tenant testified that the landlord began work on the residential property that disturbed his use of the property. He stated that for a period of three weeks the landlord had someone painting the basement and the fumes bothered his son who has asthma and that he was disturbed by the noise caused by the painters.

The tenant further states he was unable to use the driveway to park his car for a week and a half, while the landlord had new gravel spread on the driveway. The tenant testified that the landlord's daughter stored furniture in a lean-to he had in the back yard that blocked his access to his lawn mower; tools and children's bikes.

The landlord testified she had hired painters to paint the basement rental unit to prepare it to be rented and that they used latex paints that were virtually odourless. The landlord testified that despite the pile of gravel in the driveway the tenant had many places to park on the residential property. The landlord does not dispute her daughter stored some items in the lean-to.

### Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, return the security deposit or file an Application for Dispute Resolution seeking to claim against the security deposit.

Section 38(6) states that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the amount of the security deposit. I accept that the landlord filed an Application for Dispute Resolution on August 20, 2010 or 14 days after the end of the tenancy.

As such, I find the landlord complied with the requirement in the *Act* to return the security deposit or file an Application for Dispute Resolution within 15 days of the end of the tenancy and receipt of the tenant's forwarding address. There is no requirement under the *Act* for the landlord to attend a subsequent hearing resulting from their Application, as such, I dismiss the tenant's claim to double the amount of the security deposit.

As the landlord provided no evidence to support retention of the security deposit, I find the tenant is entitled to the return of the security deposit and accrued interest. This decision does not impact the landlord's ability to pursue damages through either her current action under review or future Applications for Dispute Resolution, in accordance with the *Act*.

In order to be successful in making a claim for compensation for loss or damage the applicant must provide sufficient evidence to establish the following four points:

1. That a loss or damage exists;
2. The loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

I accept that the landlord was conducting work on the residential property that included painting in the basement rental unit and regarding the driveway and her daughter storing items on the property, however, the tenant has failed to establish that he suffered any loss or damage as a result.

Even if I were to accept the tenant suffered a loss or damage he has failed to establish the value of this damage or loss, despite his claim that it was valued at the entire amount of rent for two months. And finally, the tenant has failed to show that he took any steps to mitigate any loss or damage.

For these reasons I dismiss the portion of the tenant's claim for loss of use of the rental unit and residential property.

## Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$594.48** comprised of \$550.00 security deposit; \$19.48 accrued interest and as the tenant was only partially successful in his application, \$25.00 of the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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*.

Dated: March 09, 2011.

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Residential Tenancy Branch