

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended this face-to-face hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that the tenant sent and the landlord received a copy of the tenant's dispute resolution hearing package by registered mail in November 2010. I am satisfied that the tenant served this package to the landlord in accordance with the *Act*.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to obtain a return of security deposit funds from the landlord? Is the tenant entitled to recover his filing fee for this application from the landlord?

### Background and Evidence

This tenancy commenced as a fixed term tenancy on March 1, 2009, but was continued as a month-to-month tenancy after the expiration of the initial term. Monthly rent was set at \$1,300.00, payable on the first of each month. Neither party provided a copy of the tenancy agreement. The landlord testified that she continues to hold the tenant's \$650.00 security deposit paid on or about March 1, 2009. The tenant vacated the premises on October 1, 2010.

The parties agreed that the tenant provided the landlord with written notice of his new forwarding address where the landlord could send his security deposit on October 2, 2010. The landlord said that she lost the tenant's forwarding address and called him a number of times to make arrangements whereby he could pick up a portion of his security deposit at her place of employment. She said that she told him that she was willing to return to him his security deposit less \$200.00 that she considered owing as a result of his damage to the rental unit. She testified that he told her on each occasion that he was too sick to pick up his security deposit from her place of work. She testified

that she asked him for his mailing address, but he refused to give it to her. He denied having been asked for his mailing address by the landlord during these conversations.

The tenant said that he was also seeking a monetary award for reimbursement for cable television which was included in his rent from March 1, 2009 until the landlord terminated it in September 2009. He did not know what the cable television cost was and was uncertain as to the amount he could claim for this reduction in service during his tenancy. The landlord testified that cable television was never included in his rent.

### 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), 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.

The parties agree in this case that the tenant did provide the landlord with his forwarding address in writing the day after this tenancy ended. There was conflicting testimony from the parties regarding whether the landlord asked the tenant for his forwarding address when she spoke with him. However, the parties agreed that the landlord told the tenant that she was planning to withhold \$200.00 from his security deposit, even though she had no authorization from the Residential Tenancy Branch to do so. The landlord also asked the tenant to pick up the remaining \$450.00 portion of his security deposit that she was willing to return to him at her place of work.

Although I recognize that there is conflicting testimony regarding the landlord's telephone request(s) that the tenant provide him with his new forwarding address, I find that the landlord did not comply with the provisions of section 38 of the *Act* with respect to the return of the tenant's security deposit. The tenant did comply with the *Act* in sending written notice of his new forwarding address to the landlord. I find the tenant blameless in the landlord's lack of care in failing to retain his written forwarding address. The landlord's stated intention to the tenant to reduce the amount of the security deposit she planned to return to him and her insistence that he attend her place of work to obtain this partial security deposit are not authorized under the *Act*.

I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address in writing and did not apply for dispute resolution to

retain that deposit. In accordance with section 38(6) of the Act, I find that the tenant is therefore entitled to a monetary order amounting to double his security deposit with interest calculated on the original amount only. No interest is payable over this period.

I dismiss the tenant's application for a monetary award for reimbursement for his cable television payments from September 2009 until the end of this tenancy without leave to reapply. The tenant provided insufficient evidence to demonstrate that this service was included in his monthly rent and provided no information regarding the estimated cost of this loss of service.

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 allows the tenant to recover double his security deposit and to recover his filing fee for this application.

Item	Amount
Return of March 2009 Security Deposit	\$650.00
Section 38(6) Amount Owed by Landlord	650.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$1,350.00</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*.