



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD

### Introduction

Both parties have applications file. The Landlord has filed an application for dispute resolution for a monetary order for damage to the unit, site or property and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. The Tenant has also filed an application for dispute resolution for the return of double the security deposit.

Both parties attended the hearing by conference call and gave affirmed testimony.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Tenant entitled to a monetary order?

### Background and Evidence

Both parties agree that this Tenancy began on July 2, 2010 on a 12 month fixed term tenancy. The monthly rent was \$3,995.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$2,000.00 was paid at the beginning of the Tenancy. No Condition Inspection Reports for the move-in or move-out were conducted. The Tenancy ended on September 28, 2010 and the Landlord received a forwarding address in writing for the security deposit on November 19, 2010.

The Landlord is claiming \$5,000.00 for compensation for damage or loss from smoke damage caused by the Tenant. The Landlord relies on daily report sheets that on two occasions, February 24, 2010 and May 31, 2010 a neighbour complained of smoke in the hallway. The Landlord stated that there is only one other unit of this floor, but is down the hall and around a corner. The Tenant disputes this stating there is also a common meeting room on the floor with access to a patio which is used frequently by other Tenants. The Landlord has stated that she did not return the security deposit

because she felt that the costs of damage outweighed the value of the security deposit amount. The Landlord did not file an application for dispute resolution to keep the security deposit.

### Analysis

Based upon the affirmed testimony of both parties, I am satisfied that both have been properly served with the notice of hearing package. Neither has disputed receiving the packages. The Landlord's late evidence package was not served on the Tenant, but I find that there has been no bias to the Tenant, as the evidence contained is of a signed tenancy agreement that the Tenant has confirmed that it was one that was entered into at the beginning of her tenancy.

Based upon the contradictory affirmed direct evidence between the two parties over the smoke damage and a lack of supporting evidence from the Landlord, I find that the Landlord has failed in her claim. As such the Landlord's application is dismissed.

Based upon the evidence from both parties, I find that the Landlord has failed to return the security deposit within 15 days of the later of the end of tenancy (September 28, 2010) and the date(November 19, 2010) the forwarding address in writing was given to the Landlord. The Landlord has also failed to apply for dispute resolution within the same time frame. As such, I find that the Tenant has established a claim for the return of double the security deposit ( $\$2,000 \times 2 = \$4,000.00$ ). The Tenant is also entitled to the return \$15.00 in accrued interest to date on the original security deposit. I grant the Tenant an order under section 67 for the balance of \$4,015.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The Landlord's application is dismissed.

The Tenant is granted a monetary order for \$4,015.00.

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: April 08, 2011.

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Residential Tenancy Branch