

## **DECISION**

**Dispute Codes:** MNDC, MNSD and FF

### **Introduction**

This application was brought by the tenant on March 11, 2011 seeking a Monetary Order for return of her security deposit in double on the grounds that the landlord did not return it with 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address.

### **Issues to be Decided**

This application requires a decision on whether the tenant is entitled to an order for return of the deposit and whether the amount should be doubled.

### **Background, Evidence and Analysis**

This tenancy began on April 15, 2008 and ended on October 2, 2010. Rent was \$1,850 per month and the landlord held a security deposit of \$925 paid at the beginning of the tenancy.

As a matter of note, this tenancy was the subject of a hearing on January 24, 2011 on the landlord's application for a Monetary Order for damage to the rental unit, overholding, recovery of the filing fee and authorization to retain the security deposit in set off.

In her decision, the Dispute Resolution Officer denied the landlord's right to claim on the security deposit on a finding that his right to do so had been extinguished by the his failure to provide a copy of a move-in condition inspection report. The DRO dismissed the landlord's claims in damages, but awarded two day's rent for overholding and the filing fee, resulting in a Monetary Order for the landlord for \$173.32.

After some dispute as to time and method, the tenant has now paid that amount to the landlord following which the landlord returned the tenant's security deposit with interest, \$935.94 by cheque dated March 16, 2011.

The tenant now seeks an additional \$925 on the grounds that the security deposit was not returned within fifteen days.

## **Analysis**

As noted section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return a deposit or file for dispute resolution to claim against it.

Section 38(6) of the *Act* states that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount.

In the present matter, I find that the landlord did comply with section 38(1) by making application for dispute resolution to claim on the deposit as recorded in the hearing and decision of January 24, 2011. Section 38(6) which mandates payment of double the deposit applies only to a landlord's failure to comply with section 38(1).

The matter of timing and method of the parties exchanging payments might have been simplified if the award to the landlord had simply been set off against the amount of the deposit and the tenant had been issued a Monetary Order for the difference.

However, as the landlord complied with section 38(1) of the *Act*, I find that there is no basis on which the tenant would be entitled to return of the deposit in double under section 38(6).

Therefore, the tenant's application is dismissed on its merits without leave to reapply and I decline to award recovery of the filing fee for this proceeding.

## **Conclusion**

The application is dismissed without leave to reapply and the request for recovery of the filing fee is denied.

June 22, 2011