

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 9:44 a.m. in order to enable him to connect with this hearing. The tenant and her agent attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant's agent explained at the commencement of the hearing that the tenant was not feeling well with influenza, so had asked her to represent her at this hearing. The tenant was available as needed and did testify when the tenant's agent could not answer specific questions regarding the tenant's application.

The tenant entered written evidence that she sent a copy of her dispute resolution hearing package to the landlord by registered mail on March 17, 2011. She provided a copy of the Canada Post Tracking Number to confirm her mailing. Although this package was returned by Canada Post, I find that the landlord is deemed to have been served this package and was notified of this hearing five days after the package was mailed. I am satisfied that the tenant served this package to the landlord in accordance with the *Act*.

Since the Residential Tenancy Branch waived the filing fee for the tenant's application for dispute resolution, the tenant did not pay a filing fee for her application and is not entitled to recovery of that fee from the landlord.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of her security deposit from the landlord? Is the tenant entitled to a monetary award in an amount equal to her security deposit due to the landlord's failure to return her security deposit within 15 days of receiving her forwarding address in writing or the end of her tenancy, whichever occurred later?

### Background and Evidence

This month-to-month tenancy commenced on or about October 1, 2010. Monthly rent was set at \$600.00, payable in advance on the first of each month. The tenant testified that the landlord continues to hold all of her \$300.00 security deposit paid on or about October 1, 2010.

The tenant testified that on December 1, 2010 she handed the landlord her notice to end this tenancy by January 31, 2011. She said that she vacated the rental unit by January 31, 2011. She entered into written evidence a number of copies of this notice which also included her forwarding address in writing for the purpose of obtaining a return of her damage deposit. The tenant also submitted copies of two subsequent witnessed letters that she said she delivered to the landlord requesting a return of her security deposit. Neither of these letters were dated, nor did they identify her forwarding address. The second of these letters noted that she delivered it to the landlord's mailbox at 6:36 on February 15, 2011.

### Analysis

Based on the undisputed written and oral evidence of the tenant, I am satisfied that the landlord has not returned any portion of the tenant's \$300.00 security deposit plus interest. I issue a monetary award in the tenant's favour in the amount of \$300.00 for the return of the tenant's security deposit. No interest is payable over this period.

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 or the end of the tenancy, whichever occurs later.

During the hearing, the tenant and her agent were somewhat confused as to the dates when the tenant provided different documents to the landlord. Despite this confusion, which appears to have resulted from the tenant's illness that day, I am satisfied that the tenant's notice to end this tenancy including her forwarding address was provided to the landlord in advance of the end to her tenancy on January 31, 2011. I am also satisfied that the tenant attempted a number of times to obtain a return of her security deposit with no success.

I find that the landlord has not returned the security deposit within 15 days of the end of this tenancy. I find that the tenant is therefore entitled to a monetary order of an additional \$300.00 pursuant to section 38(6) of the *Act*.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$600.00. I allow the tenant this monetary Order to recover the tenant's initial security deposit of \$300.00, plus an award of an additional \$300.00 for the landlord's failure to comply with the requirements of section 38 of the *Act* within 15 days of the end of this tenancy.

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*.