

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This is an application filed by the Landlord for a monetary order to keep part of the security deposit and recovery of the filing fee.

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

### Issue(s) to be Decided

Is the Landlord entitled to keep part of the security deposit?

### Background and Evidence

The Landlord claims that the Tenant was served with the notice of hearing package by registered mail on April 17, 2011 as shown in the submitted registered mail receipt. The Tenant's advocate confirms service. The Landlord also claims that an evidence package was served on the Tenant by registered mail on July 19, 2011 as shown in a submitted registered mail receipt. The Tenant confirms service of the evidence. The Tenant has also filed evidence in dispute of the Landlord's claim. Service is not in issue as the submitted evidence are duplicates of the Landlord's evidence.

As noted in RTB file no. 765296, facts established during that hearing. There is no signed tenancy agreement. No rent was paid. The Tenant's moved into the rental unit on October 25, 2010 early for an agreed tenancy to begin on November 1, 2010. A security deposit of \$475.00 was paid on October 22, 2010. On November 16, 2010 the Tenant received a refund of \$237.50 from the security deposit. The Tenant's vacated the rental unit on November 1, 2010.

The Landlord is seeking to retain the remaining amount of \$237.50 from the security deposit. The Landlord claims that an agreement was made to split the difference as noted in a letter from the Landlord dated March 22, 2011. The Tenant disputes this. The Landlord claims that the Tenant failed to give proper notice to end the tenancy. The Landlord states that proper notice in writing was receiving as stated on the letter dated November 15, 2010. The Tenant disputes this stating that notice was given verbally on October 27, 2010.

## Analysis

I am satisfied based upon the submitted evidence and the direct testimony of both parties that the both parties have been properly served with the notice of hearing and evidence packages by registered mail.

Section 45 of the Residential Tenancy Act states,

### **Tenant's notice**

**45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) **is not earlier than one month after the date the landlord receives the notice, and**

(b) **is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

I find based upon the evidence provided that proper notice was received by the Landlord on November 15, 2010 in the written form from the Tenant as shown in the submitted letter.

Section 52 of the Residential Tenancy Act states,

### **Form and content of notice to end tenancy**

**52** **In order to be effective, a notice to end a tenancy must be in writing** and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

Although the Tenant has not provided any supporting evidence of verbal notice to vacate the rental unit, I find that the notice to end tenancy must be in writing to be effective. As such, I find that the Landlord has established a claim that the Tenant failed to give proper written notice to vacate the rental unit on November 15, 2010, some two weeks after the Tenant vacated the unit. The Landlord is entitled to retain the \$237.50 remaining from the security deposit. The Landlord is also entitled to recovery of the \$50.00 filing fee. I grant the Landlord a monetary order for the balance due of \$50.00. 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 is entitled to keep the remaining \$237.50 amount from the security deposit.

The Landlord is granted a monetary order for \$50.00.

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: July 28, 2011.

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Residential Tenancy Branch