

## **DECISION**

Dispute Codes      MNDC, MNSD, 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 double her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant entered into written evidence a copy of her August 31, 2010 notice to end this tenancy by September 30, 2010. She provided a copy of the Canada Post Customer Receipt and Tracking Number to confirm that she sent both landlords a copy of her dispute resolution hearing package on April 6, 2011. She entered written evidence from Canada Post confirming that the landlords received these packages on April 9, 2011. The male landlord (the landlord) confirmed that the landlords received these documents as claimed by the tenant. I am satisfied that the tenant served these documents in accordance with the *Act*.

### Issues(s) to be Decided

Is the tenant entitled to obtain a return of her security deposit from the landlords? Is the tenant entitled to obtain a monetary award equal to her security deposit as a result of the landlords' failure to return her security deposit within 15 days of the tenant providing her forwarding address in writing to the landlords? Is the tenant entitled to recover her filing fee for her application from the landlords?

### Background and Evidence

This tenancy commenced initially as a fixed term tenancy on August 15, 2008. After the expiration of this fixed term, the tenancy converted to a month-to-month tenancy. Monthly rent was set at \$1,050.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$525.00 security deposit paid on August 16, 2008.

The tenant testified that she completed her move from the rental property on October 1, 2010, a day after the September 30, 2010 date identified as the end of her tenancy in her written notice to end this tenancy. The parties agreed that the landlord allowed her

to stay the extra day to complete her move. The parties agreed that the tenant paid no rent for October 2010, but paid all of her September 2010 rent.

The landlord said that a joint move-in condition inspection was conducted on or about August 14, 2008. However, he produced no written report of that inspection and did not comply with the requirement to provide a copy of a written report to the tenant. No joint move-out condition inspection was conducted nor was one requested by the landlord. Since the landlords did not comply with the joint move-in and move-out provisions of the *Act*, their entitlement to retain portions of the tenant's security deposit is very limited.

The tenant testified that she cleaned most of the rental unit before she vacated the premises. Before she left, she told the landlord that she had not tried to clean the self-cleaning oven as she did know how to perform this task. At the hearing, the tenant testified that by the end of her tenancy, she had not cleaned the four windows in the rental unit nor did she clean the oven. She said that she cleaned the remainder of the rental unit before she left.

When the parties discussed the tenant's request for a return of her security deposit after she vacated the rental unit, the landlord indicated that he would need to deduct an amount from her security deposit to reflect that the rental unit was not left in clean condition at the end of this tenancy. In his July 25, 2011 written evidence, the landlord stated that the landlords had to pay "for the cleaning of the stove, windows, bath, and fridge." The landlord did not enter written evidence of any invoices or receipts, nor did he apply for dispute resolution to seek compensation for damage or losses arising out of this tenancy. However, at the hearing the landlord gave oral testimony that he paid \$100.00 or \$120.00 to cleaners at the end of this tenancy to restore the rental unit to its previous condition. He gave an undisputed estimated that it likely took the cleaners he hired an hour and a half to clean the oven and the windows in the rental unit.

Until shortly before the dispute resolution hearing, the landlord had not provided an explanation as to why he had refused to return any portion of the tenant's security deposit. In his written evidence, the landlord explained that he and his wife had both lost their jobs and the rental property, and were in serious financial difficulty. They were seeking financial advice on how to manage their financial affairs.

### 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 latter of the provision by the tenant of the forwarding address in writing or the end of the tenancy.

In this case, there is undisputed evidence that the landlords neither filed for dispute resolution nor returned any portion of the tenant's security deposit within 15 days of receiving the tenant's forwarding address in writing in November 2010. The landlord also confirmed that he had no written agreement from the tenant to allow him to retain any portion of her security deposit.

Under these circumstances, I find that the landlord has not returned the security deposit within 15 days of receiving the tenant's forwarding address in writing. The tenant is therefore entitled to a monetary award amounting to double the security deposit with interest calculated on the original amount only.

Based on the oral and written evidence before me, I also find that there are grounds to reduce the amount of the monetary award granted to the tenant for her security deposit.

The parties agreed that the tenant did not vacate the rental unit in accordance with her written notice to end this tenancy. As such and in accordance with section 57 of the *Act*, I find that the amount of the tenant's overall monetary award should be reduced by \$33.87, the pro-rated overholding charge for one of thirty-one days in October 2010 ( $\$1,050.00/31 = \$33.87$ ).

I also reduce the tenant's overall monetary award as she did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit reasonably clean. Based on the tenant's oral testimony, I find that she failed to clean the oven or the windows at the end of this tenancy. I reduce the amount of the tenant's overall monetary award by \$30.00 to reflect the undisputed estimate provided by the landlord that the cleaners likely required 1.5 hours to clean the oven and the windows. This reduction is at an estimated rate of pay of \$20.00 per hour which seems reasonable under the circumstances.

As the tenant has been successful in her application, I allow her to recover the \$50.00 filing fee for her application from the landlords.

### Conclusion

I issue a monetary Order in the tenant's favour in the following terms which allows her to obtain double her security deposit and her filing fee for her application less amounts for

her overholding beyond the date of her tenancy and cleaning costs resulting from her tenancy:

<b>Item</b>	<b>Amount</b>
Security Deposit paid on August 16, 2008	\$525.00
Double Security Deposit pursuant to s. 38(6) of the <i>Act</i>	525.00
Interest on original amount paid from date security deposit paid to date of this order	2.97
Less Overholding Fee	-33.87
Less Allowable Cleaning Costs	-30.00
Filing Fees	50.00
<b>TOTAL MONETARY ORDER</b>	<b>\$1,039.10</b>

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders as soon as possible. Should the landlord(s) 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*.