

## **DECISION**

Dispute Codes      MNDC, MNSD

### 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; and
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlords confirmed that they received the copy of the tenant's dispute resolution hearing package that she sent the landlord on May 18, 2011. I am satisfied that the tenant sent this package in accordance with the *Act* and that the parties exchanged written evidence in advance of the hearing.

### Issues(s) to be Decided

Is the tenant entitled to a monetary order for loss arising out of this tenancy? Is the tenant entitled to a monetary order pursuant to section 38 of the *Act* to obtain all or a portion of her security deposit? Is the tenant entitled to a monetary order for the landlord's failure to comply with the terms of section 38 of the *Act*?

### Background and Evidence

This one-year fixed term tenancy commenced on April 1, 2010. Monthly rent by the end of this tenancy was set at \$950.00, payable in advance on the first of the month. The tenant paid a security deposit of \$475.00 and a pet damage deposit of \$225.00 on February 5, 2010. The parties agreed that the landlord returned a total of \$550.00 from these deposits to the tenant as part of another cheque to the tenant by April 15, 2011. The landlords testified that they retained \$150.00 from the tenant's security deposit for carpet cleaning expenses incurred by the landlords after the tenant vacated the rental unit and moved into another rental unit managed by the landlord on March 15, 2011. The parties agreed that the tenant returned the keys to this rental unit to the landlord on March 29, 2011.

The tenant applied for a monetary award of \$688.24. This amount included a request for a return of one-half month's rent as the tenant had to leave the rental unit when the ceiling in the living room fell on March 4, 2011. The tenant did not believe that she was fairly compensated for her expenses in relocating to a hotel for the final days of her tenancy until she moved into the new rental unit on March 15, 2011. She also disputed

the \$150.00 retained by the landlord for carpet cleaning at the end of this tenancy. At the commencement of the hearing, the tenant said that she was reducing the amount of the monetary award she was seeking to \$600.00. This figure resulted from her request for a rebate of \$450.00 in rent and a return of the \$150.00 retained by the landlord for carpet cleaning.

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. In this case, the parties agreed that the landlord had the tenant's forwarding address as she relocated to another of the landlord's properties by March 15, 2011.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." The landlords testified that they did not obtain the tenant's written authorization to retain any portion of the tenant's security deposit. The landlords confirmed that they did not return all of the tenant's security deposit nor did they apply for dispute resolution to obtain authorization to retain the \$150.00 portion of the tenant's security deposit.

### Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute. Both parties agreed to settle their dispute on the following terms:

1. The parties agreed that the landlord will pay the tenant \$600.00 by September 15, 2011.
2. The parties agreed that this payment by the landlord comprises a full and final settlement of all issues in dispute between them arising out of this tenancy.

Conclusion

In order to implement the above settlement reached between the parties, I issue a monetary Order in the tenant's favour in the amount of \$600.00. I deliver this Order to the tenant in support of the above agreement for use in the event that the landlord does not abide by the terms of the above settlement.

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 after September 15, 2011, in the event that the landlord has not complied with the terms of this settlement agreement. 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*.