

## **DECISION**

Dispute Codes      MNDC

### Introduction

This is an application filed by the Tenant for a monetary order claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

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

### Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

### Background and Evidence

The Tenant states that a tenancy agreement was entered into with the Landlord to begin on September 1, 2010 on a month to month basis with a monthly rent of \$1,000.00 payable on the 1<sup>st</sup> of each month as shown in the submitted signed copy of the tenancy agreement dated July 25, 2010. A cheque for \$1,000.00 was made payable to C.C. on July 25, 2010 as September 2010 rent. The cheque was deposited and cleared on July 26, 2010 by the Landlord.

The Tenant state that on August 25, 2010 the Landlord, P.C. advised the Tenants that he changed his mind and would not be renting the unit to them. Numerous telephone calls to the Landlord were made for the return of the September 2010 rent of \$1,000.00. A written notice dated September 1, 2010 with the Tenant's forwarding address was sent to the Landlord for the return of the \$1,000.00. As of the date of the hearing August 31, 2011, the Landlord has not returned the \$1,000.00. The Landlord states that the Tenant's did not have sufficient funds for the deposit or for paying rent. The Landlord stated in direct testimony that he did not have the permission of the Tenants to retain the rent nor did he file for dispute resolution to retain it.

### Analysis

Both parties have attended the hearing and the Landlord has confirmed receipt of the notice of hearing and evidence package filed by the Tenant. The Landlord has not filed any evidence. As such, I am satisfied that both have been properly served.

Based upon the evidence provided by the Tenant and the direct testimony of the Landlord, I find that the Landlord has with-held the \$1,000.00 in dispute without consent of the Tenant, nor has the Landlord filed for dispute resolution and received an order from the Residential Tenancy Branch to retain the disputed amount. The Tenant is granted a monetary order under section 67 for \$1,000.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenants are granted a monetary order for \$1,000.00.

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: August 31, 2011.

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Residential Tenancy Branch