

## Decision

### Dispute Codes:

MNSD, MNDC, MND, FF

### Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for the return of the security deposit and for compensation for damage or loss under the Act. The hearing was also convened to deal with a cross application by the landlord for a monetary order for money owed or compensation for damage or loss under the Act.

Both the landlord and tenant were present and gave testimony in turn.

### Preliminary Matter

At the outset of the hearing the landlord testified that he served the hearing documents to the tenant by leaving them in person with a third party at the service address given by the tenant. According to the landlord, they had attempted to personally serve the tenant as required under the Act, but the tenant was not available.

Sections 88 and 89 of the Act determine the method of service for documents. The Tenant has applied for a Monetary Order under section 38 and 67 of the Act which requires that the landlord serve the tenant as set out under Section 89(1). This requires service in one of the following ways:

- (a) **by leaving a copy with the person, (personal service);**
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) **by sending a copy by registered mail to the address at which the person resides** or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1)

The tenant confirmed that the address used by the landlord was her valid service address, but stated that she did not receive the documents. In any case, I find that the landlord did not serve the documents in a manner compliant with the Act. Having

found that the landlord has failed to prove adequate service of the Notice of Hearing and Application for Dispute Resolution, I have determined that the landlord's application for monetary compensation be dismissed with leave to reapply.

### **Issues to be Decided**

The tenant was seeking to receive a monetary order and the return of the security deposit retained by the landlord. The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act.
- Whether the tenant is entitled to monetary compensation under section 7 of the Act.

### **Background and Evidence**

The tenancy began in December 2007 and the current rent was \$1,000.00 per month. A security deposit of \$500.00 was paid. The tenancy ended on February 21, 2011 and the tenant testified that she had supplied her forwarding address in writing on February 27, 2011. The tenant testified that the deposit was never refunded and she is claiming double the amount because 15 days had lapsed since the end of the tenancy.

The tenant testified that there was a substantial rent overpayment to the landlord and that a previous dispute resolution hearing was held awarding some compensation to the tenant. However, according to the tenant, at the time that the prior hearing was held, the tenant did not have all of the receipts to prove the actual amount of the overpayment. The landlord testified that her application before me was to add additional evidence to support a further claim for compensation.

Written testimony in the tenant's application indicated that she was "*disputing the Resolution that was made on April 4, 2011*". In addition to a refund of double the security deposit, the tenant was also claiming \$1,620.00 awarded to the landlord at the prior hearing, and \$755.00 to reverse an amount reduced off of monies owed to the tenant at the previous hearing. The total claim by the tenant is \$3,425.00. The tenant submitted a substantial amount of evidence to support her claims.

### **Analysis: Tenant's Application**

In regard to the return of the security deposit, I find that section 38 of the Act provides that, within 15 days after the later of the day the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the

security deposit or pet damage deposit to the tenant or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, after the end of the tenancy, the director orders that the landlord may retain the amount. I find that the tenant did not give the landlord written permission to keep the deposit. Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit.

I find that the landlord did make an application seeking to retain the security deposit being held in trust for the tenant within the required 15 days. I find that the tenant is therefore entitled to compensation of \$508.14.

With respect to the remainder of the tenant's claims I find that I find that the tenant's request for monetary compensation relating to over-payment of rent was an issue that was already heard and determined at a previous hearing.

*Section 77* of the *Act* states that, except as otherwise provided in the *Act*, a decision or an order of the dispute resolution officer is final and binding on the parties. The tenant's claims were officially determined at the earlier hearing and in the decision of the Dispute Resolution Officer on April 4, 2011 and is therefore final and binding on the parties.

I find that, to consider this matter again would violate the principal of *res judicata*. *Res judicata* is a rule in law establishing that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim constitutes an absolute bar to any subsequent application involving the same claim or issues.

Accordingly, I find that this portion of the tenant's application must be dismissed.

**Conclusion**

Based on the testimony and evidence I find that the tenant is entitled to monetary compensation of \$558.14, comprised of \$508.14 refund of the security deposit and the \$50.00 paid by the tenant for this application.

I hereby grant a monetary order in favour of the tenant for \$558.14. This order must be served on the Respondent and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court.

The remainder of the tenant's application is hereby dismissed without leave to reapply.

The landlord's application is dismissed for inadequate service with leave to reapply.

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 18, 2011.

---

Residential Tenancy Branch