

## **Decision**

### **Dispute Codes:**

MNSD, MNDC

### **Introduction**

This Dispute Resolution hearing was convened to deal with an application by the tenant for an order for the return of double the security deposit retained by the landlord and compensation for expenditures incurred during the tenancy.

The tenant and the landlord participated in the hearing and gave testimony.

### **Issue(s) to be Decided**

- 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 for loss of quiet enjoyment and other violations of the Act by the landlord that occurred during the tenancy.

The burden of proof is on the applicant to establish that a deposit was paid and not returned and that compensation for damages and loss is warranted under the Act.

### **Background and Evidence**

The tenancy began on in April 2010 with rent set at \$1,550.00 per month and a security deposit of \$775.00 was paid. No copy of the tenancy Agreement was in evidence. The tenancy ended on March 31, 2011. The tenant submitted into evidence a written statement regarding the claim, a copy of a cheque from the landlord and a copy of the calculations made by the landlord with respect to money owed and the deposit paid.

The landlord testified that the tenant provided a written forwarding address on May 8, 2011 and after adding up the credit for the security deposit and reimbursements owed to the tenant and then deducting the costs for repairs to the unit, the landlord returned the balance that was owed to the tenant. A cheque for as \$531.40 was mailed to the tenant on May 12, 2011. The landlord acknowledged that the tenant had never given signed permission for the landlord to retain any portion of her deposit, nor did the

landlord make an application for dispute resolution to obtain an order permitting the landlord to keep the deposit.

The tenant testified that she received the cheque for \$531.40. The tenant stated that she was owed \$501.40 in reimbursement for expenditures and expected this amount from the landlord plus the security deposit refund of \$775.00.

The tenant stated that she did not cash the cheque sent by the landlord and instead decided to file for dispute resolution. The tenant testified that because more than 15 days had lapsed since the landlord received the forwarding address , she is now seeking double the security deposit in the amount of \$1,550.00 plus the additional compensation owed for the expenditures. The total claim is for \$2,101.40.

### **Analysis**

In regard to the return of the security deposit, I find that section 38 of the Act states that the landlord can retain a security deposit if the tenant gives written permission at the end of the tenancy. If the permission is not in written form and signed by the tenant, then the landlord's right to merely keep the deposit does not exist and once the forwarding address has been provided, the landlord must either return the deposit or make application to keep the deposit within 15 days.

Based on the evidence and the testimony, 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 or making application to keep it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

I find that, the tenant did provide a written forwarding address asking the landlord to return the deposit and I find that the landlord did not comply with the Act by returning the deposit in full within 15 days. Given the above, I find that the tenant is now owed \$1,550.00 representing double the deposit.

With respect to the tenant's claim for additional damages or funds owed, I find that the parties had evidently discussed the issue of compensation to the tenant for some expenditures incurred by the tenant, for which the landlord may have agreed to compensate her. However, I find that there may have been some discussions or agreements with respect to a set-off of these payments with respect to reimbursing the landlord for damage to the suite. For this reason, I decline to hear testimony with respect to other monies owed and I dismissed the tenant's application for damages with leave to reapply.

In regards to the landlord's own claim for damages, in regard to which testimony was given, I was not able to hear nor consider any of the landlord's claim against the tenant during these proceedings. This hearing was convened to deal with the *tenant's* application under section 38 and 67 of the Act and the landlord did not make a cross application. That being said, the landlord is also at liberty to make a separate application to claim damages if the landlord feels that compensation is warranted pursuant to section 67 of the Act.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$1,600.00 comprised of \$1,550.00 for the security deposit and the \$50.00 cost of the application.

I hereby grant a monetary order in the amount of \$1,600.00 in favour of the tenant. This order is final and binding must be served on the landlord. If necessary, it may be filed in Small Claims Court and enforced as an order 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*.

Dated: August 19, 2011.

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Residential Tenancy Branch