

## **DECISION**

Dispute Codes      MNSD, MNDC

### Introduction

This matter dealt with an application by the Tenant for the return of a security deposit and for compensation for loss or damage under the Act, regulations or tenancy agreement.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on June 30, 2011. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord’s absences.

### Issues(s) to be decided

1. Is the Tenant entitled to the return of the security deposit?
2. Is there a loss or damage and if so how much?
3. Is the Tenant entitled to compensation for the loss or damage and if so how much?

### Background and Evidence

This tenancy started on December 4, 2010 as a month to month tenancy. The tenancy ended May 24, 2011. Rent was \$450.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$200.00 in December, 2010. The Tenant said the security deposit was paid in two parts \$187.50 by the Ministry and \$12.50 by the Tenant. The Tenant’s Advocate said they have only claimed the \$187.50 paid by the Ministry because that is the only receipt the Tenant has for the security deposit.

The Tenant said that he moved out of the rental unit on May 24, 2011 as a result of the Landlord evicting him. The Tenant said he gave the Landlord a forwarding address in writing on June 1, 2011. The Tenant said no move in condition inspection was done, and no move out condition inspection report was completed. The Tenant continued to say that he requested the return of his security deposit back in his letter of June 1, 2011.

The Tenant's Advocate said the Tenant is claiming double the security deposit paid by the ministry in the amount of  $\$187.50 \times 2 = \$375.00$  and the return of the rent for May, 2011 in the amount of  $\$375.00$  and the June, 2011 rent in the amount of  $\$375.00$ . The Tenant's Advocate said the ministry office told the Tenant that the Landlord agreed to return the June, 2011 rent of  $\$375.00$ , but the Landlord has not returned it to date.

The Tenant's Advocate said the Tenant's total claim is  $\$1,125.00$ .

### Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I accept the Tenant's testimony and evidence that he gave the Landlord a forwarding address in writing on June 1, 2011. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution by June

15, 2011. Consequently I find for the Tenant and grant an order for double the security deposit applied for of \$187.50 in the amount of  $\$187.50 \times 2 = \$375.00$ .

I also find that the Tenant is entitled to recover rent paid for June, 2011 in the amount of \$375.00, which represents the rent paid by the ministry to the Landlord for June, 2011.

With respect to the Tenants claim of \$375.00 for the May rent, I find the Tenant had use of the rental unit up to May 24, 2011 and he did not pay his portion of the rent in the amount of \$75.00 for May, 2011, therefore I dismiss the Tenant's claim for \$375.00 for the return of the May rent paid by the ministry.

As the Tenant was successful in this matter; pursuant to section 67 a monetary order for \$750.00 has been issued to the Tenant. This Monetary order represents double the security deposit in the amount of \$375.00 and the recovery of rent paid in the amount of \$375.00.

### Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$750.00 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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*.

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Residential Tenancy Branch