

## DECISION

Dispute Codes      MNDC, MNSD, OLC, FF

### Introduction

This hearing dealt with the tenants' 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;
- authorization to obtain a return of double their security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 9:42 a.m. in order to enable the landlord to connect with this hearing. The female tenant (the tenant) attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that the tenants sent a copy of their dispute resolution hearing package to the landlord by registered mail on August 27, 2011. She provided a Canada Post Tracking Number to confirm this mailing. I am satisfied that the tenants served this package in accordance with the *Act*.

### Issues(s) to be Decided

Are the tenants entitled to obtain the unreturned portion of their security and pet damage deposits from the landlord? Are the tenants entitled to obtain a monetary award for the landlord's failure to return all of their security and pet damage deposits? Are the tenants entitled to recover their filing fee for this application from the landlord?

### Background and Evidence

This month-to-month tenancy commenced on February 1, 2011. Monthly rent was set at \$795.00, payable in advance on the first of each month. The tenants paid a security deposit of \$397.50 and a pet damage deposit of \$200.00 on January 14, 2011.

The tenants applied for a monetary award of \$1,285.00. They made this application because they maintained that the landlord did not comply with the provisions in sections 38 (1) and 38(6) of the *Act* requiring the landlord to return all of their deposits within 15 days of receiving the tenants' forwarding address in writing. The tenant testified that this tenancy ended on July 31, 2011, at which time the tenants provided their written forwarding address to the landlord's representative who conducted the joint move-out

condition inspection with them. The tenants provided undisputed written evidence that the landlord returned \$507.50 of those deposits to the tenants by way of a cheque postmarked by Canada Post on August 18, 2011 and received by the tenants on August 23, 2011. The tenants entered written evidence of the landlord's breakdown of payments made and owing during their tenancy. Included in this written evidence was the landlord's retention of \$90.00 from the tenants' security deposit for carpet cleaning at the end of this tenancy.

### Analysis

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 for an Order to make a claim to retain the deposit. The landlord did not apply for dispute resolution to authorize the retention of a portion of the tenants' security and pet damage deposits. If the landlord fails to comply with section 38(1) of the *Act*, 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)).

The following provisions of Policy Guideline 17 of the Residential Tenancy Policy Guidelines would seem to be of relevance to the consideration of this application:

#### *RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION*

*3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;...*
- whether or not the landlord may have a valid monetary claim...*

Although the landlord did not comply with the above requirements of the *Act*, I find that the landlord did return the \$507.50 portion of the security and pet damage deposits to the tenants and the tenants have cashed the landlord's cheque in that amount.

However, the landlord did not return the entire amount of the tenants' security and pet damage deposits within 15 days of receiving the tenants' forwarding address for doing so. I find that the landlord had no legal basis for withholding the remaining \$90.00 of the tenants' security and pet damage deposits. The landlord did not file an application for dispute resolution within 15 days of receiving the tenants' forwarding address in writing, nor did the landlord obtain the tenants' written permission to withhold these funds. As noted in Policy Guideline 17, the validity of any monetary claim that the

landlord may have against the tenants has no bearing on the landlord's obligation to return the entire security and pet damage deposits to the tenants in accordance with section 38 of the *Act*.

Under these circumstances, I find that the tenants are entitled to a monetary award for the \$90.00 unreturned portion of their security and pet damage deposits, plus a monetary award of \$597.50 for the landlord's failure to comply with section 38 of the *Act*. No interest is payable over this period.

As the tenants have been successful in their application, I allow them to recover their \$50.00 filing fee for this application from the landlords.

### Conclusion

I grant the tenants a monetary Order in the following terms which allows the tenants to obtain the unreturned portion of their security and pet damage deposits, a monetary award for the landlord's failure to comply with section 38 of the *Act*, and the recovery of their filing fee for their application.

<b>Item</b>	<b>Amount</b>
Total Unreturned Portion of Tenants' Security & Pet Damage Deposits	\$90.00
Monetary Award for failure to return all of Tenants' Security and Pet Damage Deposits pursuant to section 38(6) of the <i>Act</i>	597.50
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$737.50</b>

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders as soon as possible. Should the landlord(s) 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*.