

## **Decision**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit and the pet damage deposit retained by the landlord.

The tenant and a representative of the landlord participated in the hearing by telephone.

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

The issue to be determined based on the testimony and the evidence is whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act.

### **Background and Evidence**

The tenancy began on April 1, 2001 at which time a security deposit of \$375.00 was paid. Current rent was \$750.00 per month. The tenancy ended at the end of April 2011 and the tenant gave the landlord a written forwarding address at that time.

The tenant testified that she received a cheque from the landlord for the partial return of the security deposit but the cheque did not clear. The tenant testified that on May 26, 2011 she wrote to the landlord again requesting the return of her security deposit. A copy of this correspondence was in evidence.

The landlord acknowledged that the deposit was paid but not returned to the tenant after the tenant had provided a written forwarding address. The landlord testified that the tenant still owed rent for the month of May 2011.

### **Analysis : Claim for Return of Security Deposit**

With respect to the return of the security deposit, I find that section 38 of the Act states that the landlord can retain a security deposit only if the tenant gives written permission at the end of the tenancy, or if the landlord has obtained an order through dispute resolution to keep the deposit to satisfy a liability or obligation of the tenant.

However, in order to make a claim against the deposit, the landlord's application for dispute resolution must be filed within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later.

Based on the evidence and the testimony, I find that at the end of the tenancy the tenant did not give written permission to keep the deposit, nor did the landlord make an application seeking an order to keep the deposit within the 15-day deadline to do so.

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, and must pay the tenant double the amount of the security deposit.

With respect to the landlord's own claim for rent owed, I found that I was not able to hear nor consider the landlord's claim against the tenant during these proceedings because this hearing was convened to deal with the *tenant's* application under section 38 of the Act and that was the only matter before me. The landlord is at liberty to make his own application to pursue a claim.

In the matter before me, however, I find that under section 38, the tenant is entitled to total compensation of \$822.06 comprised of \$750.00, which is double the security deposit of \$375.00, interest of \$22.06 and the \$50.00 cost of the application.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$822.06 and hereby issue a monetary order for this amount in favour of the tenant. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) 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: October 25, 2011.

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Residential Tenancy Branch