

## **Decision**

**Dispute Codes:** MNDC, MNSD, FF

### **Introduction**

This hearing was convened in response to the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / return of the security deposit / and recovery of the filing fee. The tenant and a person assisting him participated in the hearing and gave affirmed testimony.

Despite being served by way of registered mail with the application for dispute resolution and notice of hearing (the "hearing package"), the landlord did not appear. Evidence provided by the tenant includes the Canada Post tracking number for the registered mail. The Canada Post website informs that the hearing package was unclaimed by the landlord and was subsequently returned to the tenant.

Further to service by registered mail, as above, the hearing package was also personally served on the landlord at the front door to the unit on September 9, 2011.

### **Issues to be decided**

- Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement

### **Background and Evidence**

There is no written tenancy agreement in evidence for this tenancy with respect to a rented room. The landlord, who is not the owner, was himself also a resident in the unit as a renter.

On August 10, 2011 the tenant paid the landlord a security deposit of \$300.00. On August 11, 2011 the tenant moved into the unit and paid the landlord rent for August in the amount of \$550.00. Subsequently, during the balance of that month, in response to the landlord's request the tenant made several advance payments toward next month's rent in the total amount of \$120.00. No receipts were issued to the tenant with respect to any of the aforementioned payments.

On August 29, 2011 the landlord denied the tenant's entry to the unit and took possession of the tenant's key. When the tenant returned to the unit on August 31, 2011, the landlord continued to deny the tenant entry and declined the tenant's request for reimbursement of rent and his security deposit.

## **Analysis**

Based on the affirmed / undisputed testimony of the tenant, I find as follows:

- that the tenancy began on August 11, 2011;
- that the tenant paid a security deposit of \$300.00;
- that the tenant paid rent for August in the amount of \$550.00;
- that the tenant paid rent in advance for September in the amount of \$120.00;
- that the tenancy was effectively ended by the landlord on August 29, 2011;
- that despite requesting the return of his security deposit and informing the landlord in writing of his forwarding address, the landlord did not repay the security deposit.

In relation to rent paid for August, I find there is insufficient evidence for me to conclude that \$550.00 was the amount due and payable for one full month. Accordingly, I find that the tenant paid \$550.00 for the 21 day period from August 11 to 31, 2011. As the tenancy was effectively ended by the landlord on August 29, 2011, I find that the tenant has established entitlement to reimbursement of 3 days worth of rent totaling \$78.57, which is calculated as follows:

$$\$550.00 \text{ (amount paid)} \div 21 \text{ (\# of days from August 11 to 31)} = \$26.19 \text{ (daily rent)}$$

$$\$26.19 \text{ (daily rent)} \times 3 \text{ (\# of days from August 29 to 31)} = \$78.57$$

As for reimbursement of advance payments of rent for September, I find that as the term of tenancy did not extend into any portion of September, and the landlord ended the tenancy without proper notice, the tenant has established entitlement to reimbursement of the full amount paid of \$120.00.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit. Following from the above, as the landlord has neither repaid the security deposit or filed an application for dispute resolution, I find

that the tenant has established entitlement to the double return of his security deposit in the total amount of \$600.00 (2 x \$300.00).

As the tenant has succeeded with his application, I find that he has also established entitlement to recovery of the \$50.00 filing fee.

In sum, I find that the tenant has established a claim of \$848.57 as set out in detail above (\$78.57 + \$120.00 + \$600.00 + \$50.00).

### **Conclusion**

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$848.57**. This order may be served on the landlord, filed in the 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*.

DATE: November 23, 2011

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Residential Tenancy Branch