

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This is an application filed by the Tenant for a monetary order for the overpayment of rent, the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

### Issue(s) to be Decided

Is the Tenant entitled to the return of double the security deposit?

Is the Tenant entitled to a monetary order for overpaid rent?

### Background and Evidence

Both parties agreed that this Tenancy began on March 31, 2011 and ended on September 30, 2011 as shown in the submitted copy of the signed tenancy agreement. The monthly rent was \$1,925.00 and \$100.00 for utilities, totalling \$2,025.00 per month. A security deposit of \$2,500.00 was paid. Both parties agreed that the Landlord deposited 3 cheques from the Tenant in unit #103 for the months June, July and August by way of the posted dated cheques received from that Tenant previously and applied them to the rent due for unit #101 for the same months.

The Tenant is seeking the return of double the security deposit, stating that the Landlord has not complied with the Act. The Tenant states that the Landlord received the forwarding address in writing on May 25, 2011. The Landlord disputes this. The Tenant states that the forwarding address in writing was given to the Landlord on May 25, 2011 and refers to the statement of adjustments for the sale of unit #103. The Tenant states that she received a partial security deposit return of \$1,050.00. The Landlord confirms this.

The Tenant claims that the Landlord received an over payment of rent for 3 months for a total claim of \$6,075.00. The Landlord disputes this. The Tenant refers to the statement of adjustments (purchase for unit #103) for both the seller and buyer. The

Tenant refers to a notation of “\$25,000.00 less 3 month rent for #101 \$4075.00” which the Tenant stated in her direct testimony the amount was an error by her Lawyer and should be \$6,075.00. The Landlord disputes this. The Tenant has not provided any supporting evidence. The Landlord states that the noted amount should have been \$4,050.00 for rent from April and May of 2011 instead of the \$4,075.00. The Landlord states that the monthly rental amount of \$2,025.00 for those two months totalling \$4,050.00 was paid. The Landlord states that other then the payments through the original post dated rent cheques from the previous Tenants that he has not received any overpayment of rent.

### Analysis

As both parties have attended the hearing and have made detailed reference to the evidence submitted that I am satisfied that both has been properly served with the notice of hearing and evidence packages.

I find that the Tenant has not established a claim for the return of double the security deposit. Section 38 of the Residential Tenancy Act states,

#### **Return of security deposit and pet damage deposit**

38 (1) 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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) 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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

Based upon both the documentary and direct evidence submitted that the Tenant has failed to provide the forwarding address in writing to the Landlord. The Tenant refers to the statement of adjustments as proof of this. The Tenant has not provided this in written form. The notice of a forwarding address in writing for the return of a security deposit should state the intended purpose of that notice and where the deposit can be sent. This portion of the Tenant's application is dismissed. I also find that as the Tenant has not provided their forwarding address in writing that the Landlord is deemed to have received it in accordance with the Act 5 days after the date of this decision made. The Landlord is deemed to have been served January 21, 2012 which is 5 days after this decision dated January 16, 2012.

I find that Tenant has failed to establish a claim of a rent overpayment of \$6,075.00. The Tenant refers to payments made on the statement of adjustments which is disputed

by the Landlord. I find without further supporting evidence of this that the Tenant has failed and prefer the evidence of the Landlord that the notation of payment of rent refers to April and May as opposed to the June, July and August rent.

Conclusion

The Tenants application is dismissed.

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: January 16, 2012.

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Residential Tenancy Branch