

## **DECISION**

Dispute Codes      MNSD

### **Introduction**

This is an application filed by the Tenant for a monetary order for the return of the security deposit.

Both parties attended the hearing by conference call and gave testimony. The Tenant did not submit any evidence. The Landlord submitted two evidence packages that the Tenant has acknowledged receiving. As both parties have attended the hearing and have acknowledged receipt of the evidence submitted, I am satisfied that both have been properly served under the Act.

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

Is the Tenant entitled to a monetary order for the return of the security deposit?

### **Background and Evidence**

The Tenant states that the security deposit of \$700.00 was not returned by the Landlord at the end of the tenancy. The Tenant states that the Tenancy ended on February 1, 2012 and that the forwarding address in writing was given to the Landlord on January 27, 2012. The Landlord confirms in her direct testimony that the Tenancy ended on February 1, 2012. The Landlord disputes that the security deposit paid was \$600.00 and not the \$700.00 claimed by the Tenant. The Landlord has provided a copy of the signed tenancy agreement as evidence. The Tenant states that \$600.00 was paid by her and an additional \$100.00 was paid by her boyfriend. The Tenant has no evidence to support this. The Landlord confirms receiving the Tenant's forwarding address in writing, but is unsure of the date.

### **Analysis**

Section 38 of the Residential Tenancy Act states,

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

(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.

The Landlord confirms not returning the security deposit within 15 days of the end of the tenancy or receiving the forwarding address in writing. In the absence of any supporting evidence from the Tenant, I find that the Landlord has established that the security deposit paid was \$600.00. I find based upon the undisputed testimony provided by both parties that the Tenant has established a claim for a \$600.00 monetary order for the return of the security deposit. I grant an order under section 67 for \$600.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The Tenant is granted a monetary order for \$600.00.

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: March 30, 2012.

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Residential Tenancy Branch