

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This is an application filed by the Tenant for a monetary order for the return of a disputed security deposit amount withheld by the Landlord and the recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and the Landlord has acknowledged receiving the 1 evidence package submitted by the Tenant (the Landlord submitted no documentary evidence), I am satisfied that both parties have been properly served with the notice of hearing and evidence package filed.

### Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

### Background and Evidence

Both parties have agreed that the tenancy ended on February 20, 2012 that that a condition inspection report was completed on the same date with both parties. The Tenant provided a forwarding address in writing for the return of the security and pet damage deposits, which was noted on the condition inspection report. Both parties also agreed that a security deposit of \$725.00 and a pet damage deposit were paid on May 15, 2010 as noted on the signed tenancy agreement.

The Tenant seeks recovery of \$502.88 which the Landlord withheld from the Tenant without permission. The Landlord states that there were issues with the end of tenancy but that he did not obtain permission to retain the amount nor did the Landlord apply for dispute to retain it.

### Analysis

I accept the undisputed testimony of the Tenant that the Landlord withheld \$502.88 from the security and pet damage deposits.

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.

The Landlord has confirmed in his direct testimony that he did not have permission to retain the disputed amount nor did he apply for the right to retain it. As the Tenancy concluded on February 20, 2012 and the Tenant filed for dispute for the return of the security deposit on March 6, 2012, I find that the Tenant has established her claim for the \$502.88. The Tenant is also entitled to the recovery of the \$50.00 filing fee. The Tenant is granted a monetary order under section 67 for \$552.88. 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 \$552.88.

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: May 09, 2012.

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Residential Tenancy Branch