

## DECISION

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking monetary orders for compensation under the Act or tenancy agreement, for return of double the security deposit, and for the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issues(s) to be Decided

Is the Tenant entitled to the compensation sought?

### Background and Evidence

The tenancy began in September of 1993, with the Tenant paying a security deposit of \$313.00.

The Tenant gave the Landlord a Notice to End Tenancy in October of 2008, with an effective date of November 31, 2008. The Tenant gave the Landlord his forwarding address on November 27, 2008. The Tenant gave the Landlord verbal permission to deduct \$70.00 from his security deposit and interest, for carpet cleaning.

The Tenant is elderly with deteriorating health, and had an Advocate helping him at the end of the tenancy and during the hearing. The Advocate helped the Tenant hire a third party who cleaned the unit at the expense of the Tenant, and the Advocate also helped clean the unit.

In the middle of December of 2008, the Advocate called the Landlord to enquire about the security deposit. She was informed the accountant was away and this was causing the delay.

In the middle of January 2009, the Tenant received \$212.36 from the Landlord. No interest had been added and more than the agreed to \$70.00 was deducted.

The Landlord's Agents testified that for a period of time during the tenancy, the interest was paid out to the Tenant on a yearly basis. They retained the extra money from the deposit for cleaning the unit. The Landlord did not file a claim against the security deposit as they felt the difference was minor.

While there was no requirement in the Act in 1993 to do an incoming condition inspection report, the Act did require an outgoing condition inspection report to be done.

### Analysis

Based on the affirmed testimony, relevant evidence and on a balance of probabilities, I find as follows:

I find the Landlord has breached section 38 of the Act by not returning the security deposit and interest after the agreed to portion had been deducted, or filing a claim to retain more than the agreed to portion, within the 15 days required under the Act. The Landlord also did not handle the interest on the deposit in accordance with the Act.

I find that the Tenant has established a total monetary claim of **\$748.01** comprised of double the security deposit of \$313.00, the interest on the original amount held of \$72.01 and the \$50.00 fee paid by the Tenants for this application. From the \$748.01, I allow the Landlord credits of \$26.36 for interest already paid and the \$221.36 already paid to the Tenant, leaving an amount of \$500.29 due to the Tenant.

Therefore, I grant the Tenant an order under section 67 for the balance due of **\$500.29**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Landlord did not return or claim against the security deposit in accordance with the Act. The Landlord also breached portions of the Act by not conducting an outgoing condition inspection report, and by paying interest on the security deposit in an improper manner.

The Tenant is given an order for \$500.29, which is enforceable in the Provincial 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: September 02, 2009.

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Dispute Resolution Officer