

## **DECISION**

### Dispute Codes:

MNDC, MNSD, OPT, AAT, LAT

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for compensation for damage or loss under the Act, return of the security deposit, to obtain an Order of possession for the rental unit, an Order allowing the tenant access to the unit and to authorize the tenant to change the locks to the rental unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

### Preliminary Matter

The landlord's evidence was set aside. The landlord was personally served with Notice of this hearing on February 15, 2011. The landlord sent her evidence to the tenant, via registered mail, on February 18, 2011. The tenant did not receive the mail and I found that it was not served to the tenant, within the 2 day time-frame as required by the Rules of Procedure.

### Issue(s) to be Decided

Is the tenant entitled to compensation under the Act?

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to an Order of possession for the rental unit?

Must the landlord be Ordered to allow the tenant access to the rental unit?

May the tenant change the locks to the rental unit?

### Background and Evidence

The tenancy commenced in July 2009; the landlord confirmed receipt of a deposit in the sum of \$290.00. Rent in the sum of \$560.00 was due on the first day of each month.

Move-in and move-out condition inspections were not completed.

The tenant agreed to move out of the rental unit on February 1, 2011, as he believed the landlord's son was going to move into the unit. The tenant discovered that compensation should be paid when a family member moves into a unit and he is claiming the equivalent of one month's rent, as provided by the Act.

On February 1 and 2, 2011, the tenant moved belongings out of the unit, onto the driveway. At one point the tenant had to leave the property for a period of time and when he returned the landlord had moved the balance of his belongings out of the unit. The tenant's personal property remains on the driveway, exposed to the elements.

The tenant's witness stated that the tenant called her on February 1, to say that the landlord had moved his property onto the driveway and that the landlord had changed the locks to the rental unit.

The landlord's witness attended at the rental unit on February 2, 2011, in order to check the plumbing and electrical systems. The tenant was present and the witness assisted the tenant in moving some items outside. The witness stated that the unit was empty, except for a bed. The witness also assisted the tenant when he cut his finger; he bandaged the cut for the tenant.

The tenant stated the landlord has refused to sign an affidavit stating she did not receive the rent cheque in the mail from a government department that paid the rent on behalf of the tenant. The landlord provided affirmed testimony that she did not receive the February rent cheque and that she has not cashed a February, 2011, rent cheque.

The landlord stated that she did not indicate that her son would move into the rental unit. The landlord testified that the tenant agreed to vacate the unit and that she did not move his belongings out of the unit.

The landlord asked the tenant to come to the rental unit address to pick up his belongings.

The tenant confirmed that he had not given the landlord his written forwarding address in writing, other than at the start of the tenancy. The tenant confirmed that the landlord may use the rental unit address as his temporary forwarding address.

### Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

During the hearing I determined that the landlord has, effective today's date, been given the tenant's forwarding address in writing; this was fully explained to the parties, during the hearing.

Therefore, I find that the landlord has fifteen days to comply with section 38 of the Act, by either returning the deposit or submitting a claim against the deposit. If the landlord has not complied with section 38 by March 10, 2011; I find that the tenant may submit another application requesting return of the deposit.

In relation to the tenant's request for an Order of possession for the rental unit; I find, from the testimony of the parties and, on the balance of probabilities, that the tenant voluntarily vacated the rental unit on February 1 and 2, 2011, and that his request for an order of possession is dismissed.

As the tenant is not entitled to an Order of possession I find that the balance of his claim requesting Orders is dismissed.

During the hearing I explained that the tenant is not compelled to vacate a rental unit unless there is a written mutual agreement or Notice is given by the landlord in the form required by the Act.

There is no evidence before me that a Notice ending tenancy for landlord's use of the property was issued to the tenant; therefore, I find that the tenant is not entitled to compensation under section 51 of the Act.

### Conclusion

The tenant's Application is dismissed.

The landlord has fifteen days from today's date to comply with section 38 of the Act. If the deposit is not returned or the landlord does not submit an application claiming against the deposit by March 10, 2011; the tenant is at liberty to then submit an Application requesting return of his deposit.

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: February 22, 2011.

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Residential Tenancy Branch