

## **REVIEW HEARING DECISION**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This hearing was convened pursuant to a review hearing being granted in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under section 38. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

Both, the tenant and the landlord were represented at today's hearing and each provided sworn testimony to this matter. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

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

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The undisputed facts before me to which both parties agreed are as follows. The tenancy ended May 30, 2010.

The landlord claims the tenant abandoned the rental unit without notice. The tenant claims the landlord asked him to vacate and he did so expeditiously without notice to the landlord. As a result, the parties did not mutually conduct a move out inspection as per section 35 of the Act.

The tenant claims that he provided the landlord with his written forwarding address on June 14, 2010 by giving it in person to one of the landlord's daughters which the tenant believes appeared approximately 14 years old. The landlord denies that this took place. The attending respondent is the older of the landlord's two daughters – age 25 – and

she denies receiving it. The younger daughter is purportedly 18 years old and she provided a signed statement that she also did not receive a written letter from the tenant in June 2010. The landlord denies receiving it anytime in 2010, and has yet to receive a copy of the letter, although the Branch received such a copy on January 17, 2011 – 11 days following the conclusion of the hearing on January 6, 2011.

### **Analysis**

The burden of proof in this matter lies with the applicant. On preponderance of the evidence and on the balance of probabilities, I have reached a decision.

I find that the circumstances in this matter are that the landlord was obligated to follow the provision of Section 38 of the Act.

**Section 38** of the Act provides, in part, as follows (**emphasis for ease**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

And

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

In this matter I find the tenant's testimony regarding provision of the 'forwarding address' letter as ambiguous and lacking credibility. I note that the tenant did not provide a copy of the purported 'forwarding address' letter as evidence to the Branch until prompted to do by the second (2<sup>nd</sup>) decision of the Director respecting this matter at which time the tenant then sent in the evidence. The tenant has since not provided any evidence to suggest that he has forwarded a copy of this same evidence to the landlord, although the tenant had opportunity to do so before this third (3<sup>rd</sup>.) hearing. On the balance of probabilities, **I prefer** the landlord's testimony that he has not ever received the tenants' purported 'forwarding address' letter. Therefore, the tenant **is not** entitled to double the original amount of the deposit as per Section 38 of the Act.

In respect to the landlord; they were required to make an application for dispute resolution in accordance with Section 38(1). Having determined that the tenant has not provided the landlord with a forwarding address, the landlord was permitted to retain the deposit until this requirement was met.

**I order** that the landlord has now received the tenant's forwarding address, and the landlord will be deemed to have received it 7 days after the date of this decision. The landlord has 15 days from that date – **March 08, 2011** - to either repay to the tenant the original amount of the deposit of \$250, or make an application for dispute resolution to retain the deposit. If the landlord does neither of these two actions, I find the tenant will be entitled, on application, to double the amount of the original deposit. As a result, this application of the tenant's **is dismissed** with leave to reapply.

### **Conclusion**

The tenant's application for double the return of the security deposit **is dismissed** with leave to reapply.

**I have ordered** that the landlord has until March 08, 2011 to either return to the tenant the original amount of the deposit of \$250, or make application for dispute resolution to retain the 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*.