

## **DECISION**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This is the Tenant's application for double the security deposit paid to the Landlord and to recover the cost of the filing fee from the Landlord.

I reviewed the evidence provided prior to the Hearing. All parties gave affirmed testimony and the Hearing proceeded on its merits.

### **Issues to be Decided**

- Is the Tenant entitled to a monetary order, and if so, in what amount?

### **Background and Evidence**

The Landlord's agent gave the following testimony:

The tenancy ended on April 30, 2009. On April 29, 2009, the Landlord mailed the refund of the security deposit of \$500.00, together with accrued interest in the amount of \$5.68, to the Tenant at her forwarding address, via regular mail.

On May 26, 2009, the Landlord received an e-mail from the Tenant notifying that she had not yet received the cheque. The Landlord responded to the Tenant's e-mail, suggesting that he could directly deposit the money into her bank account immediately. The Tenant declined to give the Landlord her banking information. The Landlord asked the Tenant if she had a friend or relative to whom the Landlord could send the replacement cheque, but the Tenant said she didn't want the Landlord to do so. The Landlord reissued another cheque on May 26, 2009 and sent it by regular mail to the Tenant's forwarding address. The Landlord asked the Tenant to advise him by June 1, 2009, if she did not receive the replacement cheque. The Landlord did not hear back from the Tenant, so he assumed she had received it.

On July 6, 2009, the Landlord received the Notice of Hearing documents from his lawyer. On July 9, 2009, the Landlord again requested the Tenant's banking

information so he could deposit the money directly into her account, but the Tenant refused to provide it. On July 29, 2009, the Landlord reissued another cheque and sent it to the Tenant via registered mail to her forwarding address. The registered mail was delivered to the Tenant on August 5, 2009.

The Landlord believes the Tenant was deliberately attempting to foil the Landlord's attempts to return the security deposit to the Tenant so she could get double the security deposit. The Landlord, by mailing the cheque three times, and by suggesting the Tenant provide banking information so the Landlord could deposit the money directly into her account, and by suggesting he could mail the cheque to a friend or family member, had made every effort to provide the Tenant with the security deposit refund. The Tenant would not cooperate.

The Tenant's agent gave the following testimony:

The Tenant does not dispute that the Landlord mailed the cheques on April 29 and May 26, 2009, but the Tenant did not receive those cheques.

The Tenant did not feel comfortable providing the Landlord with her banking information.

On June 9, 2009, the Tenant filed her Application for Dispute Resolution. On June 10, 2009, the Tenant mailed the Landlord the Notice of Hearing documents, via registered mail, to the Landlord at the address given for the Landlord on the tenancy agreement.

On July 23, 2009, the Landlord told the Tenant he would re-issue the cheque. The Tenant received the cheque and cashed it.

**Analysis**

I accept that the Landlord, in good faith, attempted to expediently return the Tenant's security deposit on April 29, 2009 and May 26, 2009. The Landlord did not hear back from the Tenant, as he expected to, after June 1, 2009, so he understandably expected that the Tenant had received the second cheque. The purpose of Section 38(6) of the Act is to dissuade Landlords from unilaterally attempting to hold on to security deposits. In this case, the Landlord made multiple attempts to return the Tenant's security

deposit, and through no fault of the Landlord, the Tenant did not receive the cheques mailed on April 29, 2009 and May 26, 2009.

The Tenant's application is dismissed in its entirety without leave to re-apply.

### **Conclusion**

The Tenant's application is dismissed without leave to re-apply.

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 28, 2009