

## **DECISION**

Dispute Codes      MNSD

### Introduction

This series of hearings dealt with the Tenant's Application for Dispute Resolution, in which she was seeking double her security deposit back from the Landlord and to recover the filing fee for the Application.

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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

This matter was originally scheduled to be heard on November 17, 2009, however, the Tenant's Application for Dispute Resolution was dismissed as she did not appear at the first hearing.

The Tenant filed for a Review of the dismissal. The Review was allowed on the grounds the Tenant was unable to attend the hearing due to circumstances beyond her control.

The matter was re-scheduled for January 20, 2010, and I adjourned that hearing in order for the Landlord to provide the security deposit refund based on the reasons described below. The hearing continued today and was concluded, and this Decision sets out the reasons behind my findings and determinations.

### Issues(s) to be Decided

Is the Tenant entitled to double the security deposit pursuant to section 38 of the Act?

### Background and Evidence

This tenancy began in February of 2006, with the Tenant paying the Landlord a security deposit of \$365.00. The tenancy ended when the Tenant vacated the rental unit on June 30, 2009. At the time the Tenant was vacating an Agent for the Landlord, who works as the building manager, prepared a written outgoing condition inspection report with the Tenant ("Agent 1"). I note that there was a great deal of acrimony between the Tenant and Agent 1 throughout these proceedings. Neither one was able to refrain from interrupting the other during the course of their respective testimony, although both were cautioned about this several times.

The outgoing condition inspection report lists several items that the Landlord wanted the Tenant to pay for, such as suite cleaning and carpet cleaning. The Tenant signed the form indicating she agreed that the Landlord could deduct **\$169.00** from the security deposit and accrued interest. The balance due to the Tenant was **\$208.76**. The Tenant also included a forwarding address, in writing, on the condition inspection report.

The Tenant waited a little over three weeks for the return of the balance. When she did not receive the balance she filed her Application for Dispute Resolution, which indicates she was requesting a monetary order for "**169 x 2 = \$338.00**". [Reproduced as written.]

The Tenant went to the rental unit property and attempted to serve Agent 1 with the Notice of Hearing and her Application for Dispute Resolution. According to the testimony of the Tenant, Agent 1 refused to accept the documents for service and would not give the Tenant the address for the Landlord to serve documents to.

The Tenant then sent the documents to an address she had received from a government authority, although this was not actually the correct address for the Landlord, and the mail was returned to the Tenant.

As described above, the Tenant did not attend the first hearing for reasons beyond her control. Another Agent for the Landlord ("Agent 2"), appeared at the first hearing and had submitted evidence that the Tenant had agreed to the amount of \$169.00 being deducted from the security deposit and interest. The Tenant's claim was dismissed in part due to this evidence, though largely because she had not appeared. Upon review, the Tenant was granted another hearing.

At the second hearing, January 20, 2010, the Tenant explained she did not receive the balance due to her within the 15 days as required under the Act and that was why she was seeking double the amount in her Application. I note that section 38 of the Act holds, in part, that if the Landlord does not return or file an Application to keep the security deposit within 15 days of the end of the tenancy (or receipt of the Tenant's forwarding address) the Landlord must pay the Tenant double the security deposit.

At this second hearing Agent 2, who is a bookkeeper for the Landlord, explained she had prepared a cheque for the balance of the security deposit refund in the amount of **\$208.76** and sent this to the Tenant prior to the July 15, 2009, time limit as required under the Act.

Agent 2 then submitted that she did not understand how the Tenant could claim for double the \$169.00, when the Tenant had already agreed the Landlord could keep this amount in writing.

The Tenant testified she had not received the cheque in the mail from the Landlord. She alleged the Landlord had not sent it. The Tenant also explained she had meant in her Application to request double the return of the balance or 2 x \$208.76. She also

continued to dispute the amount she had allowed the Landlord to deduct (\$169.00) as being unreasonable or unnecessary.

Agent 2 then explained she did not realise the Tenant had not received the balance due to her in the mail in July of 2009. She testified she had not provided evidence on this issue, as it was not clear in the Tenant's Application she was requesting double the balance of the deposit back, rather the Tenant had asked for double the amount which was deducted from the deposit back.

It was at this point I ordered the Landlord to return the balance of **\$208.76** to the Tenant, along with \$25.00 for half of the filing fee for the Application, for a total of **\$233.76.**, and adjourned the hearing.

At the hearing today, March 4, 2010, the Tenant confirmed she received this amount from the Landlord. The Tenant still insisted the Landlord should be paying her double the balance of the security deposit. Again the Tenant and Agent 1 continuously interrupted each other.

Agent 2 testified the cheque sent to the Tenant prior to July 15, 2009, had not been returned and that it had not been cashed.

### Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find that in these circumstances, where both parties have made mistakes, and where there is no evidence to support fraud by either party, it is just to place the parties back to the position they should have been in prior to the series of mistakes occurring. That is why the Landlord was ordered to pay the Tenant the balance of the security deposit due, plus a portion of the filing fee. I find that I will not award any other amounts in this matter.

On the issue of mistakes, for example, the Tenant had made an error in setting out the particulars of her claim when she requested the return of double the portion she had agreed the Landlord could retain from the deposit. Agent 1 had made a mistake in not accepting service of the hearing documents and refusing to provide the Tenant with the proper address of the Landlord.

It is also clear that the acrimonious relationship between the Tenant and Agent 1 contributed to much of the dispute here.

While the Tenant still does not believe the Landlord sent her a cheque with the balance due, it is also open to the Landlord to conclude the Tenant received the mail and did not cash the cheque, in order to support her claim for double the balance.

I further find that the testimony of Agent 2 was more persuasive than that of the Tenant. I base this on the genuine surprise shown by Agent 2 when she learned the Tenant had

not received the balance of the deposit cheque in the mail. The testimony of Agent 2 was also uncoloured by animosity, which was present in the Tenant's testimony as well as that of Agent 1.

I accept the testimony of Agent 2 that the cheque was issued and mailed to the Tenant prior to the 15 day deadline. Where the mailed cheque has gone is a mystery.

The Tenant agreed in writing to the deductions of \$169.00 being made from the deposit. I find she has insufficient evidence to prove there should be any variation in this amount.

Therefore, I find that there is insufficient evidence to determine that the Landlord did not comply with section 38(1) of the Act, and so I am unable to order the Landlord to pay double the security deposit to the Tenant, pursuant to section 38(6) of the Act.

With the balance of the deposit having been returned to the Tenant along with a portion of the filing fee, I find the Tenant has been adequately compensated under section 67 of the Act. I dismiss her Application for the return of double the security 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: March 04, 2010.

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Dispute Resolution Officer