



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of their security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to the return of the security deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Tenant submitted a copy of a tenancy agreement that shows they entered into a tenancy agreement for this rental unit that began on November 01, 2010 and that they paid a security deposit of \$410.00.

The Landlord and the Tenant agree that this tenancy ended on May 31, 2011; that the Tenant gave the Landlord written authority to retain \$86.00 of the security deposit that was paid; that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit; and that the Tenant provided the Landlord with a forwarding address, in writing, on May 30, 2011.

The Agent for the Landlord stated that the Landlord mailed a cheque, in the amount of \$324.00, to the Tenant on June 09, 2011. He stated there may have been a delay in delivering that cheque, as there was a postal dispute during the month of June.

The Tenant stated that she received a cheque for \$324.00 on June 28, 2011. She stated that information on the envelope indicates that the cheque was mailed on June 14, 2011.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant paid a security deposit of \$410.00 and that the Tenant gave the Landlord permission to retain \$86.00 of the deposit, thereby reducing the amount of the deposit to \$324.00.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant did not authorize the Landlord to retain the remaining portion of the security deposit; that the Tenant provided a forwarding address, in writing, on May 30, 2011; that the Landlord did not file an Application for Dispute Resolution claiming against the deposit; and that the Landlord did not have authorization to retain the remaining portion of it.

On the basis of the testimony of the Agent for the Landlord, I find that the Landlord mailed a cheque, in the amount of \$324.00, to the Tenant on June 09, 2011. Although the envelope that was received by the Tenant indicates that the cheque was mailed on June 14, 2011, I am aware that there was a rotating postal strike in place at this time and I find it entirely possible that cheque was mailed on June 09, 2011 and was not processed until June 14, 2011.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. As I have found that the Landlord mailed a cheque for the remaining security deposit on June 09, 2011, I find that the Landlord complied with section 38(1) of the *Act*.

I note that even if I did not accept the Agent for the Landlord's testimony that the cheque was mailed on June 09, 2011, I would find that it was mailed on June 14, 2011 on the basis of the Tenant's testimony. In those circumstances I would have concluded that the Landlord had complied with section 38(1) of the *Act* because they had repaid the security deposit on June 14, 2011.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord complied with section 38(1) of the *Act*, I find that the Landlord is not obligated to pay the Tenant double the security deposit.

On the basis of the testimony of the Tenant, I find that she received the remaining portion of her security deposit on June 28, 2011.

Conclusion

As the remainder of the security deposit has been repaid, I find that no money is due to the Tenant. I find that the Tenant's Application for Dispute Resolution has been without merit and I dismiss her application to recover the cost of filing this Application for Dispute Resolution.

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 26, 2011.

Residential Tenancy Branch