



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in response to an application filed by the tenant seeking recovery of her security and pet damage deposits and recovery of the filing fee paid for this application.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issue(s) to be Decided

Is the tenant entitled to the Orders sought?

Background and Evidence

The tenant submits that she moved into the rental unit on December 1, 2008 at which time she paid a deposit of \$350.00 and a pet deposit of \$200.00. The tenant vacated May 9, 2011 then returned the keys and did a walk through with the landlord on May 28, 2011. The tenant says she supplied her forwarding address on the move-out inspection report. The tenant says the landlord kept the security and pet deposits. The tenant says she is therefore requesting the return of double her security deposit for a total of \$700.00 plus recovery of her pet deposit in the sum of \$200.00 for a total of \$900.00 plus the filing fee paid for this application.

The landlord testified that in the move-out condition inspection report the tenant agreed that the landlord could keep the \$200.00 pet deposit for damages caused to the rental unit by the pet. The landlord says the tenancy officially ended on May 30, 2011. The landlord issued a cheque payable to the tenant dated on June 9, 2011 in the sum of \$350.70. The cheque was mailed to the forwarding address provided by the tenant. The landlord says he had no idea the cheque was not received by the tenant until he was served with the tenant's Application for Dispute Resolution issued July 13, 2011. When he received the application he checked his accounting records and realized the cheque had never been cashed. The landlord says he contacted the tenant to tell her he would send a new cheque but the tenant declined his offer preferring to wait for the outcome of the hearing. The landlord decided to wait until the outcome of the hearing as well. The landlord noted that the cheque was mailed during the mail strike and was

perhaps lost in the mail. The landlord says it was never their intention to retain the security deposit.

The tenant admits that she signed the condition inspection report agreeing that the landlord could keep the \$200.00 pet deposit. However, the tenant says she later learned that the Act requires landlords to apply to the Residential Tenancy Branch to retain the deposit and the landlord never did this. The tenant agreed that once she set the matter for a hearing she did not want to accept payment from the landlord.

Analysis

I find that the evidence shows that the tenant agreed that the landlord could keep the \$200.00 pet deposit. There is nothing in the Act that prevents a tenant from making such an agreement and, in such a case the landlord is not required to bring an application seeking to retain the deposit.

I also find that the evidence shows that the landlord did mail a cheque to return the security deposit to the tenant within the proper time limits. The cheque did not arrive and I find it is reasonable and probable that it did not arrive because it was lost in the mail strike. However, instead of advising the landlord of the problem, the tenant simply made an Application with the Residential Tenancy Branch seeking double the deposit. The evidence shows that when the landlord was served with the Tenant's application he made attempts to resolve the matter directly with the tenant but the tenant chose not to accept the landlord's offer of mailing a new cheque preferring to wait for a hearing at which she might be awarded double the deposit. Having found that the landlord did mail a cheque within the proper time limits I find that the landlord should not now return double to the tenant because she chose not to resolve the matter of the missing cheque directly with the landlord. I therefore order the landlord to return \$350.70 to the tenant forthwith.

Further, as this matter would have been easily resolved with the landlord directly I find that this hearing was unnecessary and I decline to allow the tenant to recover the filing fees paid for this application.

Conclusion

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply

with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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*.