

## **DECISION**

**Dispute Codes**      MNSD, FF

### **Introduction**

This hearing was convened by way of conference call in repose to the tenant's application to recover double the security deposit; and to recover the filing fee from the landlord for the cost of this application.

Both parties appeared and gave testimony. All evidence and testimony of the parties has been reviewed and are considered in this decision.

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

Is the tenant entitled to recover double the security deposit?

### **Background and Evidence**

The tenancy started on June 1, 2010 and ended on February 29, 2012. Rent was \$1,250.00 per month and the tenant paid a security deposit of \$625.00. It was established based on the testimony of both parties that the tenant had given the landlord a forwarding address in writing prior to the end of the tenancy and that the tenant agreed in writing to allow the landlord to retain a portion of the security deposit in the amount of \$472.40, leaving \$152.60 to be refunded.

The tenant testified that on March 19, 2012, when he had not yet received the remainder of the security deposit, he filed an application for dispute resolution requesting the return of *double* the security deposit, on the basis that the landlord had not complied with section 38 of the Act by refunding the security deposit within 15 Days of the end of the tenancy and the receipt of the forwarding address.

The tenant testified that the remaining deposit of \$152.60 was not received until after the application for dispute resolution was already made on March 19, 2012. The tenant testified that the post mark on the envelope containing the landlord's cheque showed that Canada Post had processed the mailing on March 15, 2012.

The landlord testified that a cheque for the remaining security deposit was issued on March 6, 2012 and was mailed on March 9, 2012. The landlord's position is that the security deposit was returned to the tenant within the required 15 days under the Act.

### **Analysis**

I have carefully considered all the evidence before me, including the affirmed testimony of both parties.

I find that the reason the *Act* grants 15 days from either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing, is to permit a window of time comprised of 15 full days for the landlord to determine damage, if any, to the rental unit. If damage is discovered and assessed, the landlord has 15 days in which to file an application to make a claim against the tenant. In the alternative, if the landlord finds there is no reason to make any claim against the security deposit, the landlord still has the same 15 days available for the security deposit to be returned.

I find that, in this instance, the landlord was required to return the tenant's deposit by March 15, 2012. I find that, because the security deposit cheque dated March 6, 2012 was mailed by the landlord on March 9, 2012, the refund from the landlord was returned within the 15 day time frame specified under the *Act*

I find that the *Act* does not state the tenant must *receive* the funds within 15 days. I find that, as long as a cheque is dated within this time frame and sent within this time frame, the landlord would remain in statutory compliance with the *Act* and the tenant would therefore not be entitled to recover double the security deposit.

### Conclusion

Given the above, I find that the tenant's application to recover double the security deposit must be dismissed and I hereby do so without leave to reapply.

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: May 23, 2012.

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Residential Tenancy Branch