



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of her security deposit, a monetary Order for money owed or compensation for damage or loss, 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.

The Landlord submitted no evidence to the Residential Tenancy Branch. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of double the security/pet damage deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 01, 2011; that the Tenant paid a security deposit of \$975.00 and a pet damage deposit of \$975.00; that the tenancy ended on June 30, 2012; that a condition inspection report was completed at the start and at the end of the tenancy; that the Tenant provided the Landlord with a forwarding address on the final condition inspection report, on June 30, 2012; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit or pet damage deposit.

The Landlord and the Tenant agree that the Tenant gave the Landlord written permission to retain \$154.32 from the security deposit when they completed the final inspection report on June 30, 2012. The parties agree that the Tenant subsequently gave the Landlord permission to retain \$28.65 for money owed for water charges. The

Tenant stated that she thinks she granted the Landlord permission to retain this amount via email and the Agent for the Landlord thinks the permission was granted during a telephone conversation.

The Landlord and the Tenant agree that after they inspected the rental unit on June 30, 2012, the Landlord informed the Tenant the remainder of her security/pet damage deposit would be returned within fourteen days, once she determined how much was still owed for water charges.

The Agent for the Landlord stated that on July 10, 2012 she wrote a cheque to the Tenant in the amount of \$1,767.03, which represented a refund of the two deposits less the \$182.97 she had been authorized to retain. She stated that she mailed the cheque on July 10, 2012; that the cheque has not been cashed; that the cheque has not been returned to her; and that she did not know the Tenant had not received the cheque until the Tenant served her with notice of these proceedings. She stated that she mailed another cheque, in the amount of \$1,767.03, to the Tenant on August 03, 2012.

The Tenant stated that she did not receive the first cheque mentioned by the Landlord; that she did not contact the Landlord to ask about the security deposit prior to filing this Application for Dispute Resolution, and that she received the second cheque sometime during the first week of August of 2012.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant paid a security deposit of \$975.00 and a pet damage deposit of \$975.00; that this tenancy ended on June 30, 2012; that the Landlord received a forwarding address for the Tenant, in writing, on June 30, 2012; and that the Tenant received a cheque from the Landlord, in the amount of \$1,767.03, sometime during the first week of August of 2012.

On the basis of the undisputed evidence presented at the hearing, I find that on June 30, 2012 the Tenant gave the Landlord written authority to retain \$154.32 from her security deposit and that she subsequently gave the Landlord authority to retain another \$28.65. I find that I have insufficient evidence to determine whether the authority to retain the \$28.65 was given in writing, as the Landlord does not believe it was and the Tenant believes it was given via email. As there is a possibility that the authorization was given in writing, I accept that the Landlord had written permission to keep a total of \$182.97. I therefore find that the Landlord had permission to retain this amount from the security deposit, pursuant to section 38(4)(a) of the *Act*.

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. In these circumstances the Landlord was obligated to either repay the remainder of the

security/pet damage deposit or file an Application for Dispute Resolution by June 15, 2012.

In the absence of any evidence to the contrary, I accept the Agent for the Landlord's testimony that she mailed a cheque for the remaining \$1,767.03 of the security/pet damage deposits to the Tenant on July 10, 2012. In reaching this conclusion I was influenced by the testimony provided by the Agent for the Landlord, which was forthright and direct and by the fact I could find no reason to question the veracity of her testimony. I find that her testimony is corroborated, to some degree, by the undisputed fact that the Agent for the Landlord told the Tenant, on June 30, 2012, that she intended to return the security deposit within fourteen days.

In the absence of any evidence to the contrary, I also accept the Tenant's testimony that she did not receive the cheque the Landlord mailed on July 10, 2012. In reaching this conclusion I was influenced by the testimony provided by the Tenant, which was also forthright and direct and by the fact I could find no reason to question the veracity of her testimony.

I find that the Landlord attempted to repay the security/pet damage deposit when she mailed it on July 10, 2012 and that she repaid the outstanding amount of these deposits on August 03, 2012 when she mailed a replacement cheque. I find that it is entirely possible the first cheque was lost or delivered to the wrong address by Canada Post and that the Landlord should not be held liable for this error. I therefore find that the Landlord complied with section 38(1) of the *Act* when she first returned the deposits on July 10, 2012 and that the Landlord is not, therefore, obligated to pay double the security/pet damage deposits pursuant to section 38(6) of the *Act*.

Conclusion

As the Tenant has failed to establish that she is entitled to double the security/pet damage deposit and the entire amount of the deposits due to her has been returned, I dismiss the Tenant's application for a monetary Order. I find that the Tenant's application has been without merit and I dismiss her application for recover the fee for 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: October 09, 2012.

Residential Tenancy Branch