

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing dealt with an application by the tenant for return of the security deposit and pet damage deposit. The landlord participated in the conference call hearing but the tenant did not. As this is the tenant's claim and the tenant aware of the day and time of the hearing, the hearing proceeded in their absence.

### Issues to be Decided

Is the tenant entitled to any of the above under the Act.

### Summary of Background and Evidence

The landlord stated that she received the tenant's forwarding address in writing on September 13, 2010 and that on September 15, 2010 the landlord sent the tenant the \$950.00 pet damage deposit and \$105.90 as the tenant's portion of the security deposit as agreed to by the lead tenant. These cheques were sent to the tenant by registered mail and signed for by the tenant.

The security deposit was then recalculated with the lead tenant CCW and the landlord requested that the tenant return the cheque for \$105.90 so that it could be replaced with one for \$45.17 as there were 3 heaters missing from the rental unit.

The landlord was subsequently advised by her bank to put a stop payment on the \$950.00 pet deposit cheque in January 2011 as the cheque remained un-cashed.

The landlord stated that the tenant is still in possession of the security deposit cheque of \$105.90 and this cheque represents an overpayment to the tenant of \$60.73. As the landlord holds the \$950.00 pet damage deposit, the balance due to the tenant (minus the overpayment) is \$889.27. The landlord stated that she is not confident that if she issues a new cheque that it will get to the tenant and it would behove the tenant to provide the landlord with a current address for return of the balance of the deposit.

### Law

Residential Tenancy Act **Section 39 Landlord may retain deposits if forwarding address not provided**

*Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,*

- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and*
- (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.*

**Residential Tenancy Act Section 62 Director's authority respecting dispute resolution proceedings**

- (1) The director has authority to determine*
  - (a) disputes in relation to which the director has accepted an application for dispute resolution, and*
  - (b) any matters related to that dispute that arise under this Act or a tenancy agreement.*
- (2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.*
- (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.*
- (4) The director may dismiss all or part of an application for dispute resolution if*
  - (a) there are no reasonable grounds for the application or part,*
  - (b) the application or part does not disclose a dispute that may be determined under this Part, or*
  - (c) the application or part is frivolous or an abuse of the dispute resolution process.*

Analysis

In the absence of any submissions or testimony at the hearing from the tenant upon which to make a decision and as the landlord attended, I have dismissed the tenant's application with no liberty to reapply being granted.

Conclusion

The tenant's application is dismissed 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: February 1, 2011

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Residential Tenancy Branch