



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GICA HOLDINGS CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- a monetary order for return of double the security deposit; and
- recovery of the filing fee paid for this application from the landlord.

Landlord G.P. and Landlord M.W. (the "Landlords") are the property managers and they appeared as agents for the corporate landlord. The tenant also appeared at the teleconference hearing. The landlords and tenant gave affirmed testimony. During the hearing the landlords and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Issues to be Decided

- Is the tenant entitled to a monetary order for return of double the security deposit?
- Is the tenant entitled to recovery of the filing fee paid for this application from the landlord?

Background and Evidence

The undisputed evidence established that the tenant entered into a one year fixed term tenancy starting on February 1, 2015 and ending January 31, 2016, with an option to continue the tenancy on a month to month basis. The tenancy ended on December 1, 2016. Rent in the amount of \$1,750.00 was due on the first day of each month. The tenant paid a security deposit in the amount of \$875.00 on January 28, 2015.

The tenant sent the landlord an email dated December 8, 2016 setting out his forwarding address. The landlord responded by email on December 9, 2016 advising the tenant that the cheque for the full amount of the security deposit was mailed on December 7, 2016.

In an email from the tenant dated January 9, 2017, the tenant informs the landlord that the forwarding address provided by the tenant had a wrong postal code. The tenant asks the landlord to resend the cheque. The landlord sent an email to the tenant on March 9, 2017 informing him that there is another cheque available for him to pick up as they don't want the cheque to get lost in the mail again. The tenant indicated that he would wait until the hearing rather than pick it up.

The tenant is seeking to recover double the security deposit on the basis that the tenant did not receive the cheque for the security deposit within 15 days from the date the tenant provided his forwarding address.

The landlords argued that they did return the security deposit within 15 days by mailing it. The landlords argued that they should not have to pay double the security deposit as they mailed the cheque for the security deposit within the allotted 15 days. The landlords argued that they should not be held responsible for the cheque going missing after they mailed it.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

As the landlords concede that the tenant is entitled to the security deposit in the amount of \$875.00, I will only address the issue of whether or not the tenant is entitled to double the amount of the security deposit which is disputed.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. The start of the 15 days is triggered by the date of the latest event to occur.

Pursuant to section 38(6) of the *Act*, if the landlord fails to comply with section 38(1) of the *Act*, then the landlord may not make a claim against the deposit. The landlord must

also pay the tenant double the amount of the security deposit with interest payable on the original amount of the security deposit.

Pursuant to section 38(8) of the *Act*, the landlord must return the security deposit by using a service method described in section 88 (c), (d) or (f) unless the deposit is given to the tenant personally.

Section 88 (c), (d) and (f) of the *Act* states that the security deposit must be returned using one of these service methods, unless it is given personally:

- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides,*
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant, or*
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides.*

Although the tenant did not receive the cheque for the security deposit, I find that there is sufficient evidence to satisfy me that the landlord did return the tenant's security deposit within 15 days of receiving the tenant's forwarding address. In making this finding I have taken into consideration the testimony of the landlord that a cheque was sent to the tenant by ordinary mail within 15 days of receiving the tenant's forwarding address. I have also taken into consideration the emails submitted as evidence that support the landlord's testimony in regards to the mailing. Based upon the foregoing, I find that the landlord complied with section 38(1) of the *Act* by sending the cheque for the amount of the security deposit in the ordinary mail to the tenant's address within the allotted 15 days. For these reasons, I find that the tenant is not entitled to recover double the amount of the security deposit.

The tenant, however, is entitled to a monetary order in the amount of \$875.00 for the return of the security deposit, which the landlord has not disputed. I recommend that the landlord return the tenant's security deposit by sending a cheque to the tenant's correct forwarding address by registered mail if the tenant does not agree to pick it up. Registered mail will provide an opportunity to track the mailing to reduce the likelihood that it will get lost.

As the tenant's application is substantially successful, I find that the tenant is entitled to recover \$100.00 of the filing fee for their application from the landlord.

Based upon foregoing, I find that the tenant is entitled to a monetary order in the amount of \$975.00 as follows:

Return of Security Deposit	\$ 875.00
Filing Fee	\$ 100.00
Total	\$ 975.00

Conclusion

The tenant is granted a monetary Order in the amount of \$975.00, for return of the security deposit and the filing fee, which must be served on the landlord as soon as possible. Should the landlord fail to comply with this monetary Order, it 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*.

Dated: June 01, 2017

Residential Tenancy Branch