



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GAMMON INTERNATIONAL REAL ESTATE CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on September 3, 2018, wherein the Tenants sought return of double the security deposit paid pursuant to sections 38(1) and (6) of the *Residential Tenancy Act* and recovery of the filing fee.

Only the Tenant, C.M., called into the hearing. He gave affirmed testimony and was provided the opportunity to present the Tenants' evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:54 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenants' hearing package. The Tenant testified that he personally served the Landlord's Property Broker, K.H., with the Notice of Hearing and the Application on September 7, 2018.

I accept the Tenant's undisputed testimony and find the Landlord was duly served as of September 7, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenants' submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant confirmed his email addresses during the hearing. The Tenant further confirmed his understanding that this Decision would be emailed to them.

Issues to be Decided

1. Are the Tenants entitled to return of double the security deposit paid?
2. Should the Tenants recovery the filing fee?

Background and Evidence

The Tenant testified that the tenancy began June 1, 2017. Monthly rent was \$1,300.00 per month and the Tenants paid a \$650.00 security deposit.

The Tenants moved out on June 30, 2018.

The Tenants sent their forwarding address to the Landlord on July 16, 2018. The Tenant testified that a copy of the letter which was personally provided to the Landlord as well as emailed; additionally, a copy of this letter was provided in evidence.

The Tenant testified that the Landlord did not return the funds, nor did the Landlord make an application for dispute resolution as required by section 38 of the *Act*.

On or about August 2, 2018 the Tenants discovered that the Landlord had removed \$1,300.00 from his bank account despite the fact the tenancy had ended on June 30, 2018. When he brought this to the Landlord's attention they returned the funds, in addition to the security deposit.

The Tenant noted that the Landlord returned their deposit more than 15 days after receiving the Tenants' forwarding address. The Tenant further noted that he discussed this with K.H. when the security deposit was returned and she acknowledged that the funds were provided beyond the strict 15 day deadline.

Analysis

The Tenants apply for return of their security deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

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

I accept the Tenants' evidence that they did not agree to the Landlord retaining any portion of their security deposit.

I find that the Landlords received the Tenants forwarding address in writing on July 16, 2018.

The Landlord failed to return the deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, as required under section 38(1) of the *Act*.

Consequently, and pursuant to section 38(6) of the *Act*, I find the Tenants are therefore entitled to return of double the security deposit: $2 \times \$650.00 = \$1,300.00$. As they have already received \$650.00, I Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenants the balance of \$650.00 in addition to \$100.00 for recovery of the filing fee for a total award of **\$750.00**.

Conclusion

The Tenants application for return of double their security deposit is granted. In furtherance of this the Tenants are given a formal Monetary Order in the amount of **\$750.00**.

The Tenants must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) 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: January 14, 2019

Residential Tenancy Branch