



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord – MNR, MND, MNSD, MNDC, FF

For the tenant – MNSD, OLC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order to recover double the security deposit; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure provides as follows:
Commencement of Hearing: The Dispute Resolution hearing will commence at the scheduled time unless otherwise set by the Arbitrator. Rule 7.3 provides for the consequences of not attending the hearing and states: If a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to reapply.

Based on the above I find that the landlord has failed to attend the hearing to present the merits of their application, and the tenant did attend and was ready to proceed. The landlord's application is therefore dismissed without leave to reapply.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on December 23, 2015. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. All of the tenant's testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for double the security deposit?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?

Background and Evidence

The tenant testified that this tenancy started on September 01, 2003 for an initial fixed term of one year; thereafter the tenancy continued as a month to month tenancy. At the end of the tenancy the rent was \$1,309.00 per month due on the first of each month. The tenant paid a security deposit of \$475.00 on September 01, 2003 and a parking remote deposit of \$100.00 on September 27, 2003.

The tenant testified that he was never served the landlord's hearing documents and was not aware the landlord had filed an application for dispute resolution. The tenant testified that he provided the landlord with his forwarding address on August 31, 2015 the day the move out inspection was completed. This address was put on the move out inspection report and a copy of this has been provided in documentary evidence. The tenant testified that he has not given the landlord permission to keep all or part of his

security and remote deposits and as the landlord has not returned these deposits within 15 days of the end of the tenancy the tenant seeks to recover double the security and parking remote deposits plus any accrued interest.

The tenant testified that as the landlord has not complied with the *Act* with regard to the return of the security deposits the tenant seeks an Order for the landlord to comply with the *Act*.

The tenant also seeks to recover his filing fee of \$50.00.

Analysis

I accept the undisputed evidence of the tenant that the landlord was provided with a forwarding address in writing on August 31, 2015 and that the tenancy ended on that date. Section 38(1) of the *Act* states that within 15 days after the later of the date the tenancy ends, and the date the landlord received the tenant's forwarding address in writing, the landlord must make an application to keep the tenant's deposits, repay the deposits, or seek the tenant's consent in writing to keep or make a deduction from the deposits.

In this case, the landlord had until September 15, 2015 to make an application to keep the tenant's deposits. The landlord made their application on September 14, 2015. Even though the tenant testified that the landlord had not served the tenant with their hearing documents an application was still made within 15 days. As a result, I find that the landlord made the application within the allowable time limits provided by the *Act*. Based on this, it is my finding that the doubling provision related to the tenant's security deposit or parking remote deposit does not apply in this particular case.

The landlord failed to appear for the hearing and prove the reasons why the tenant's deposits were withheld; as a result, I order the landlord to return the tenant's security deposit of **\$475.00** plus accrued interest of **\$16.82** and the remote deposit of **\$100.00** plus accrued interest of **\$3.54**. pursuant to s. 38(6)(b) of the *Act*

As the tenant has been partially successful with his application, I also order the landlord to pay the tenant his filing fee for the cost of having to make the application pursuant to Section 72(1) of the *Act*. Therefore, the total amount awarded to the tenant is as follows:

Security deposit plus accrued interest	\$491.82
Parking remote deposit	\$103.54
Filing fee	\$50.00
Total amount due to the tenant	\$645.36

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$645.36**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The landlord failed to appear for the hearing. As a result, the landlord's Application is dismissed **without** leave to re-apply.

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: March 21, 2016

Residential Tenancy Branch