



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LIVE HOLDINGS OF CANADA, INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD OLC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated July 18, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order for money owed or compensation for damage or loss;
- an order granting return of all or part of the security deposit or pet damage deposit;
- an order that the Landlord comply with the *Act*, regulations, and/or a tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing in person and provided affirmed testimony. He was assisted by his advocate, D.D. The Landlord was not represented at the hearing.

The Tenant testified the Application package was served on the Landlord by registered mail on July 18, 2017. A Canada Post registered mail receipt was submitted into evidence in support. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Application package is deemed to have been received by the Landlord on July 23, 2017.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to an order granting return of all or part of the security deposit or pet damage deposit?

3. Is the Tenant entitled to an order that the Landlord comply with the *Act*, regulations, and/or a tenancy agreement?
4. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The tenant testified that he moved into the rental unit on November 1, 2013. At that time, he paid a security deposit of \$375.00 and a “utility deposit” of \$370.00 to the Landlord. Copies of two of the fixed-term agreements between the parties were submitted into evidence by the Tenant. Both confirm payment of the above deposits. The Tenant moved out of the rental unit on June 30, 2017.

The Tenant testified that he provided the Landlord with a forwarding address in writing at the same time he returned the keys to the Landlord. The Tenant's forwarding address, along with a note requesting return of the deposits, was written on an envelope into which the keys were placed. The envelope was given to M., an agent of the Landlord, to whom the Landlord had instructed the Tenant to make rent payments throughout the tenancy. A photographic image of the envelope and the Tenant's forwarding address was included with the Tenant's documentary evidence. The Tenant confirmed the Landlord has not returned any portion of the deposit amounts paid at the beginning of the tenancy since he provided his forwarding address.

The Tenant did not make any specific submissions with respect to his request for an order that the Landlord comply with the *Act*, regulations, and/or a tenancy agreement.

No one attended the hearing to provide evidence on behalf of the Landlord.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence provided during the hearing, and on a balance of probabilities, I find:

The Tenant testified, and I find, that the Landlord received from the Tenant a security deposit of \$375.00 and a “utility deposit” of \$370.00 at the beginning of the tenancy. While section 17 of the *Act* allows a landlord to require that a tenant pay a security deposit as a condition of tenancy, section 19 of the *Act* limits the amount to one half of one month's rent due. The *Act* does not provide for the collection of a “utility deposit”. Without making any specific finding, this appears to be little more than an attempt to avoid the provisions of section 19 of the *Act*, contrary to section 5 of the *Act*. In any event, I find it appropriate to conclude that the deposits paid by the Tenant, which totalled \$745.00, were a security deposit for the purposes of the *Act* and this Application.

Landlords are not permitted to arbitrarily retain security or pet damage deposits. Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to retain them within 15

days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits.

In this case, I find the Landlord received the Tenant's forwarding address in writing on June 30, 2017. Accordingly, the Landlord had until July 15, 2017, to return the security deposit to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord did neither. Accordingly, pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to recover double the amount of the security deposit from the Landlord, or \$1,490.00. Although the Tenant requested recovery of the filing fee, it appears the Tenant was granted a "fee waiver" and did not pay a filing fee. Accordingly, I decline to grant this aspect of the Application.

Based on the above analysis, and pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$1,490.00.

Conclusion

The Tenant is granted a monetary order in the amount of \$1,490.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 16, 2018

Residential Tenancy Branch