



Dispute Resolution Services

Page: 1

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 is the Tenant's Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement, return of the security deposit, an Order that the Landlord comply with the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The matter was originally set for Hearing on January 16, 2018. The Tenant and his advocate attended the Hearing, but the Landlord did not. The Arbitrator found that the Landlord had been duly served with the Notice of Hearing documents and the Hearing continued in the absence of the Landlord.

The Arbitrator issued a Decision on January 16, 2018, granting the Tenant a Monetary Order in the amount of \$1,490.00 for service upon the Landlord.

On January 19, 2018, the Residential Tenancy Branch received an Application for Review from the Landlord on the grounds that the Landlord was unable to attend the January 16th Hearing because of circumstances that could not be anticipated and were beyond the Landlord's control. On January 31, 2018, the reviewing Arbitrator allowed the Landlord's Application for Review and suspended the Decision and Order of January 16, 2018.

The Review Hearing was scheduled for 9:30 a.m. on April 4, 2018, by teleconference. This is the Review Hearing.

The Tenant and his advocate attended the Review Hearing and gave affirmed testimony. The telephone lines were open and monitored for 25 minutes, but the

Landlord did not attend the Hearing. The matter proceeded in the absence of the Landlord.

The Tenant did not provide details with respect to what section of the Act, regulation or tenancy agreement he seeks the Landlord to comply with. Therefore this portion of his Application is dismissed.

The Tenant seeks to recover the cost of the filing fee from the Landlord; however, there is no evidence that any filing fee was paid by the Tenant. Therefore this portion of his Application is also dismissed.

The Tenant's advocate testified that the Landlord did not serve the Tenant with Notice of the Review Hearing. She stated that she attended the Residential Tenancy Branch on March 16, 2018, and picked up copies of the Review Decision and Notice of Hearing from the Branch, otherwise the Tenant would not have known the date and time of the Review Hearing or the sign-in codes for the teleconference.

Issue(s) to be Decided

Is the Tenant entitled to a monetary award for double the amount of the security deposit, pursuant to the provisions of Section 38 of the Act?

Background and Evidence

The Tenant provided the following testimony:

1. The tenancy started on November 1, 2013 and ended on June 30, 2017.
2. The Tenant paid a security deposit of \$375.00 and a "utility deposit" of \$370.00 at the beginning of the tenancy.
3. The Tenant provided the Landlord with his forwarding address in writing on June 30, 2017, when he returned the key to the rental unit.
4. The Tenant did not agree that the Landlord could retain any of the security deposit at the end of the tenancy.

Analysis

The Landlord did not provide any documentary or oral testimony.

In the Review Decision dated January 31, 2018, the reviewing Arbitrator noted that the Landlord had referred to evidence of damage to the rental unit that he had provided for the original Hearing. The Reviewing Arbitrator found in the interest of “a fair and effective process”, a Review Hearing was required “as an opportunity to present evidence with respect to the Tenant’s application, respond to the Tenant’s application and address the issuance of any monetary order”.

The Landlord did not attend the Review Hearing in order to attempt to come to a settlement agreement with respect to any alleged damage caused by the Tenant.

I accept the Tenant’s undisputed affirmed testimony in its entirety.

The Act allows a landlord to accept a security deposit up to the equivalent of half of a month’s rent. There is no provision in the Act for a landlord to require a “utility deposit”. I find that the “utility deposit” is a security deposit and that it falls within the jurisdiction of the provisions of Section 38 of the Act. I find that the Tenant paid a security deposit in the total amount of \$745.00

I find that the Tenant provided the Landlord with his forwarding address in writing on June 30, 2017. Section 38 of the Act requires a landlord to either repay the security deposit in full or make application to retain all or a portion of the security deposit, within 15 days of receipt of the Tenant’s forwarding address in writing, or the end of the tenancy whichever is the later date. If a landlord does not do either of these things, the tenant is entitled to double the amount of the security deposit.

In this case, the Landlord did not return the security deposit, or make an application against the security deposit, within 15 days of receipt of the Tenant’s forwarding address. The Tenant did not agree that the Landlord could withhold any of the security deposit for damages, and therefore I find that the Tenant is entitled to a monetary award in the amount of \$1,490.00 against the Landlord pursuant to the provisions of Section 38(6) of the Act.

It is important to note that although the Landlord's right to claim against the security deposit has been extinguished, the Landlord remains at liberty to make an application for compensation for damages under Section 67 of the Act.

Conclusion

The Decision and Orders made on January 16, 2018 are reinstated. The Tenant may serve the Landlord with the Monetary Order in the amount of \$1,490.00 and may enforce the Order in the Provincial Court of British Columbia (Small Claims 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: April 04, 2018

Residential Tenancy Branch