



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]

REVIEW HEARING DECISION

Dispute Codes MNDC MNSD OLC

Introduction

This hearing dealt with a Review Hearing of the tenant's original Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") which is a new hearing, seeking a monetary order for the return of the security deposit, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement and for money owed or compensation for damage or loss under the *Act*.

On January 16, 2018, an arbitrator granted the tenant a monetary order for double the amount of the security deposit and utility deposit which was considered as part of the security deposit in the total amount of \$1,490.00.

On January 31, 2018, a different arbitrator suspended the original decision and the monetary order dated January 16, 2018 and ordered a Review Hearing and clearly indicated that the Review Hearing was a new hearing.

On June 19, 2018, the tenant, a tenant advocate ("advocate") and an agent for the landlord ("agent") attended the Review Hearing scheduled for 11:00 a.m. Pacific Time on June 19, 2018. The parties were affirmed and an opportunity to ask questions was provided to the parties. Only the relevant evidence and testimony related to the matters before me are summarized below.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Should the original decision dated January 16, 2018 be confirmed, varied or set aside?
- If the decision is varied or set aside, what should happen to the tenant's security deposit and utility deposit under the *Act*?

Background and Evidence

A fixed term tenancy began on November 1, 2013 and after October 31, 2014 a second fixed term tenancy began and reverted to a month to month tenancy on October 31, 2016 as the second lease was a two-year fixed term tenancy. There is no dispute that the tenant paid a security deposit of \$375.00 and a utility deposit of \$375.00 under the *Act*.

The tenant testified that he provided his written forwarding address on an envelope which contained the rental unit keys that the tenant claims he provided to a person named "Mike" at a gas station on June 30, 2017. While the agent and the tenant agreed that Mike does accept rent payments at the gas station as a convenience to tenants, the agent denied that he received the envelope with the written forwarding address from the tenant and only received the rental unit keys.

The tenant testified that his brother was in the car when he attended the gas station on June 30, 2017 and that he provided Mike with a white envelope that contained the rental unit keys and on the outside of the envelope had his written forwarding address on the envelope. A photograph of the envelope was submitted in evidence. The tenant was asked why he did not mail his written forwarding address to the service address listed on the tenancy agreement for the landlord and the tenant replied that he used Mike at the gas station as he was convenient. The tenant confirmed that Mike did not sign the envelope.

The agent claims that he did not receive an envelope from Mike or the tenant and that the only time he received the tenant's new address was through the tenant's application for dispute resolution regarding this matter.

The tenant called his brother AAA as a witness ("witness"). After being affirmed, the witness testified that he attended the gas station and was with his brother when he gave a white envelope to a person at the gas station. The witness testified that he did not know the person's name that the tenant gave the envelope to but that he was with his

brother and did not remain in the car at the gas station. The witness stated that as far as he could remember the envelope had the month and date and maybe address. He was later shown a photograph of the envelope and stated that it was the envelope that his brother handed over to the person at the gas station which contained the address for the tenant. The witness stated that it was his idea to take a photograph of the envelope.

The agent stated that Mike was instructed to always provide a receipt for anything he received and the parties confirmed that a receipt was not issued for the keys. The agent stated that he has not received an envelope from Mike or any other agent for the landlord. The landlord also stated that the testimony of the witness contradicted the testimony of the tenant as the tenant testified that his brother remained in the car and the witness stated that he was with his brother at the gas station and did not remain in the car.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I find the witness testimony contradicts the tenant's testimony and is of no weight as a result. Even though almost one year has passed since June 30, 2017 I find that on the balance of probabilities that it is reasonable to recall whether the witness remained inside the car when the witness felt the envelope was important enough that he would suggest to his brother, the tenant, to take a photograph of the envelope.

As a result, I am not satisfied that the envelope contained the rental unit keys and was delivered to the landlord or an agent of the landlord. Therefore, **I set aside the original decision** as I find the tenant's application is premature as I find the tenant has not provided his written forwarding address to the landlord prior to applying for the return of double the security deposit and utility deposit under the *Act*.

I find that the landlord continues to hold the tenant's \$375.00 security deposit and I find that the \$375.00 utility deposit is actually a security deposit which totals \$750.00 as a result. I caution the landlord that the *Act* does not provide for utility deposits and the landlord should not be collecting such as a result.

Section 38 of the *Act* states in part:

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.

[My emphasis added]

Pursuant to Residential Tenancy Branch Practice Directive 2015-01, as both parties attended the review hearing, I find that the date of the review hearing, June 19, 2018, to be the date the landlord was served with the tenant's written forwarding address which was confirmed during the hearing. The tenant's new forwarding address has been included on the cover page of this decision for ease of reference.

Should the landlord fail to deal with the tenant's security deposit in accordance with section 38 of the *Act*, the tenant is at liberty to reapply for the return of their security deposit and utility deposit, the latter of which I find is part of the security deposit. I note that this decision does not extend any applicable timelines under the *Act*.

As noted above, **I set aside** the decision and monetary order dated January 16, 2018. As a result, I find the January 16, 2018 decision and monetary order are of **no force or effect**. I find that the tenant's application for the return of their security deposit and utility deposit was premature and is **dismissed with leave to reapply**. As noted above, the landlord must deal with the tenant's security deposit and utility deposit in accordance with section 38 of the *Act* and has been found to have been served with the tenant's written forwarding address as of June 19, 2018.

Conclusion

I set aside the January 16, 2018 decision and monetary order.

I find the tenant's Application is premature and is dismissed with leave to reapply.

Should the landlord fail to return the tenant's security deposit and utility deposit as required by section 38 of the *Act*, the tenant is at liberty to reapply for double the return of both deposits under the *Act*.

This decision does not extend any applicable timelines under the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 25, 2018

Residential Tenancy Branch