



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, FF

Introduction

This hearing was convened in response to an application by the tenant for a Monetary Order pursuant to Sections 38, and 51(2) of the *Residential Tenancy Act* (the Act), and to recover the filing fee.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89(1) of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant claims the landlord refused the mail. The tenant provided proof of the registered mail service including the tracking number for the registered mail. The tenant also provided they sent the landlord their evidence by registered mail, which they provided was returned unclaimed.

The tenant was given opportunity to be heard, to present evidence and to make submissions. Prior to concluding the hearing the tenant acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

This tenancy started in 2010 and ended June 01, 2015. The rent payable under the tenancy agreement was \$1800.00 per month. The undisputed evidence in this matter is that the tenancy ended in accordance with the provisions of a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) dated March 02, 2015 for the purpose of the landlord, or a close family member of the landlord to occupy the rental unit as afforded the landlord by **Section 49(3)** of the Act. The tenant accepted the

Notice and vacated. The tenant testified they were provided the requisite compensation by the landlord pursuant to the Notice and **Section 51(1)**.

The tenant claims that during the move out condition inspection on June 03, 2015 the landlord notified them the rental unit was listed for sale, which concerned the tenant. The tenant provided a written statement in which they included online / internet-sourced information they obtained on July 11, 2015, stating the rental unit was for sale. The tenant claims they later were provided information on July 20, 2015, from an assistant to the realtor for the rental unit, that it had been sold. The tenant testified they also later were told by another occupant of the residential property the new occupant of the rental unit was the owner of the unit. The tenant did not personally contact the new occupant or otherwise confirmed what they were told.

In addition, the tenant claims that during the same condition inspection event of June 03, 2015 they provided the landlord their forwarding address in writing and the parties agreed the tenant would soon receive their security deposit in full. On June 19, 2015 the tenant called the landlord as they had not received their deposit as agreed. The tenant provided a copy of a bank statement which the tenant testified indicates the landlord's transfer into their account the amount of their security deposit of \$900.00 on June 19, 2015 - soon after the parties communicated on the matter.

Analysis

The full text of the Act and references herein can be accessed via the Residential Tenancy Branch website: [**www.gov.bc.ca/landlordtenant**](http://www.gov.bc.ca/landlordtenant) .

The tenant claims compensation under **Section 51(2)** of the Act which states:

- 51(2) In addition to the amount payable under subsection (1), if
- 51(2)(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - 51(2)(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I find the tenant's evidence in this matter is insufficient to establish the rental unit was indeed sold, and therefore contrary to the landlord's stated purpose for ending the tenancy. Therefore I dismiss this portion of the tenants' claim, but I do so *with leave to reapply*.

Section 38(1) of the Act provides that a landlord must return the deposits of the tenancy or apply for dispute resolution within 15 days *after* the later of: the end of the tenancy and the date the forwarding address is received in writing. I find the undisputed evidence is that the landlord received the tenant's forwarding address in writing on June 03, 2015 and I find the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address – that is, by June 18, 2015. As a result, I find the landlord is therefore liable under **Section 38(6)** which provides that the landlord must pay the tenant double the amount of the security deposit. The landlord returned \$900.00 after the period of time prescribed by the Act to do so and was obligated under **Section 38** to return *double* the amount. Therefore, I find the tenant is entitled to an additional **\$900.00**.

The tenant is further entitled to recover their filing fee of \$50.00, for a sum award of **\$950.00**.

Conclusion

I grant the tenant a Monetary Order under Section 67 of the Act in the amount of **\$950.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 20, 2016

Residential Tenancy Branch

