



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ONE WEST PROPERTIES CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNSD, MNDC, FF

Introduction

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

Both of the applicants and 2 representatives of/for the respondent landlord attended the hearing. The parties provided testimony and were provided the opportunity to make relevant submissions. The parties were also provided opportunity to mutually resolve their dispute to no avail. The tenant provided evidence they served both landlords with their application and their evidence. The landlord representatives (the landlord) acknowledged receiving all of the evidence of the tenant, and further acknowledged they did not provide the landlord with the late evidence submitted to this proceeding. As a result, the landlord's submission of document evidence was not admitted, however the landlord was permitted to provide their submission as testimony. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary matters

SP requested clarification respecting why they were a respondent in this matter, as a "landlord". The parties were provided the definition of Landlord pursuant to the Act, which is reproduced herein, *in relevant part*.

Definitions

1 In this Act:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this

The hearing advanced on the merits of the tenant's application

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

This tenancy started May 01, 2013 and ended August 02, 2017. The rent payable under the tenancy agreement was \$1650.00 per month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$825.00 which the landlord/owner of the rental unit is claimed to retain in trust. 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 June 21, 2016 and with an effective date of August 31, 2016 for the purpose the rental unit would be occupied by the landlord pursuant to Section 49(3) of the Act and for which the tenant was provided the prescribed compensation by the landlord equivalent of one month's rent under Section 51(1).

The parties agreed that at the outset of the tenancy the parties mutually conducted a *move in* inspection of the unit; and, that on August 02, 2016 the parties mutually conducted a *move out* inspection of the unit. The parties agree the landlord completed, and the parties signed off on the requisite Condition Inspection Report (CIR), at the *move in* and *move out* inspection events. The parties further agreed the landlord did not give the tenant a copy of the completed CIR in accordance with the Act or Regulations. The agent, SP, of the landlord testified they simply filed the CIR and did not send the tenant a copy. Regardless, the parties agreed the CIR did not identify

issues in the unit although the parties argued over an inclusion respecting damage to a *door frame*. The parties further agreed the tenant did not authorize or agree to a deduction from their security deposit.

The parties agreed the tenant sent their forwarding address by e-mail on August 05, 2016 to the owner landlord, MH, and copied the e-mail to the agent SP. SP testified they originally collected the security deposit but never held it in trust and gave it to the landlord.

The tenant also provided evidence the rental unit was sold and the registered ownership transferred on December 20, 2017. The landlord's agent, AM, testified the landlord owner, MH, ultimately did occupy the rental unit "for a while" because of marital discord after the tenant had vacated. Then, "after about 2 months" the owner no longer required the rental unit as their marital matters improved and therefore stopped occupying the unit and listed and sold the unit soon after. Landlord's agent AM was not sure of the timing of the owner's personal timeline events however did not dispute that any occupancy and the ownership respecting the rental unit finalized in December 2016.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

The tenant claims compensation under Section 51(2) of the Act which provides as follows:

Tenant's compensation: section 49 notice

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 admissible and relevant evidence in this matter is that the landlord may have occupied the rental unit for a short period of time after the tenants vacated. However, the evidence is also that inside of 4 months of the tenancy ending the landlord no longer occupied the rental unit and finalized the sale of the unit. I find the rental unit was not used for the stated purpose for ending the tenancy for at least 6 months after the effective date of the Notice to End for landlord's use.

As a result, I find the tenant has established an entitlement under **Section 51(2)(b)** of the Act in the prescribed amount equivalent of double the monthly rent payable under the tenancy agreement of \$1650.00. Therefore, I grant the tenant double this amount in the sum of **\$3300.00** as prescribed.

The tenant further claims remedy respecting their security deposit pursuant to **Section 38** of the Act.

In this matter I find the tenant did not provide the landlord with their forwarding address *in writing* as required by **Section 38(1)(b)**. It must be noted that a message by e-mail is not *in writing* as required by the Act. And also, the Act does not recognize an e-mail message as a document given or served in accordance with the Act; and further the deeming provisions of Section 90 of the Act do not apply to an electronic message such as a text or e-mail message. Effectively, I find the tenant did not provide the landlord with their forwarding address in accordance with Section 38 so as to trigger the doubling provisions provided by Section 38(6). Therefore, the tenant is not entitled to double the original amount of the deposit. It must also be noted that **Sections 36** of the Act, in relevant part states as follows:

Consequences for tenant and landlord if report requirements not met

36 (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The evidence is that the landlord completed a condition inspection report (CIR) in concert with the Act but did not give the tenant a copy of the CIR, therefore was precluded by the extinguishment provisions from making any damage claim to retain the deposit, even if the tenant had provided the landlord with their forwarding address in writing as prescribed by the Act.

Therefore, as the landlord's right to claim against the deposit has been extinguished, it is only appropriate, that on the tenant's application I order the landlord return the original deposit to the tenant in the full amount of **\$825.00**. It must be noted that it remains separately available to the landlord to make application for dispute resolution respecting damage to the unit.

The tenant is further entitled to recovery of the \$100.00 filing fee for this application for a total entitlement of **\$4225.00**. I accept the landlord owner MH still holds the security deposit and the resulting Monetary Order reflects as follows.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$4225.00** payable by the landlord owner MH. *If necessary*, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application in relevant part is granted.

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: March 14, 2017

Residential Tenancy Branch