Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT, TANTUS TOWERS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD, MNDC, OLC, FF

Introduction

This hearing was convened in response to an application by the tenant made January 05, 2017 for a Monetary Order under the *Residential Tenancy Act* (the Act) for loss, return of the security deposit and to recover the filing fee.

Both parties participated in the hearing. Each party provided testimony during the hearing. The second listed landlord representative exited the conference call hearing at 0:25 minutes leaving the first listed representative for the hearing duration.

The tenant acknowledged receiving all of the evidence of the landlord. The landlord acknowledged receiving all of the document evidence of the tenant, except a USB stick associated with 5 pages of the tenant's "Digital Evidence Details" form. The landlord was orally apprised as to the nature of the photo images and video evidence on the USB stick received into evidence by this proceeding. The tenant was advised it is available to them to simply re-send to the landlord another USB stick with their photo image evidence. None the less, I have relied solely on the document and oral evidence in this matter in arriving at this Decision. The parties were provided opportunity to mutually resolve their dispute to no avail. Prior to concluding the hearing both parties acknowledged presenting all of the *relevant* evidence that they wished to present.

The hearing proceeded on the merits of the tenant's application. I have reviewed all oral, written and document evidence before me that met the requirements of the Rules of Procedure. However, only the evidence *relevant* to the landlord's application and the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to the return of their security deposit?
Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The relevant undisputed evidence via the parties' testimony is as follows. The tenancy began October 01, 2016 as a written tenancy agreement dated as signed by the parties September 27, 2016 and again on September 30, 2016. The tenancy ended soon after on October 04, 2016 by way of a tenant's Notice to End Tenancy pursuant to Section 45(3) of the Act.

Rent in the amount of $1200.00 was payable in advance on the first day of each month. The parties agree the tenancy agreement represents a rental unit accepted by the tenant remotely without benefit of a prior viewing, or sight unseen, as the tenant resided in Manitoba. As a result of assurances between the parties the tenant paid the landlord what each agreed was the *security deposit* for the unseen rental unit in the amount of $600.00 collected by the landlord on September 27, 2016. As further result the tenant travelled to British Columbia arriving late September 30, 2016. The parties quickly again signed a tenancy agreement for the rental unit although still unseen by the tenant. The tenant claims they had received prior assurance as to the condition of the unit with which the tenant was satisfied. The parties provided an abundance of contrasting testimony as to the timing of events. The tenant claims they were made to sign a Condition Inspection Report (CIR) on September 30, 2016 prior to seeing the unit. The landlord claims both parties were in the rental unit when they signed the tenancy agreement and mutually inspected the unit. Regardless of which, both parties provided a CIR for the *move in* portion signed by both parties on September 30, 2016 with the tenant agreeing the report fairly represents the condition of the premises: all indicated as G(good).

The tenant claims they immediately became dissatisfied with the condition of the unit as it was described as dirty, smelly, in disrepair, and the fixtures did not depict the photo image they were provided on the Internet by the landlord. The tenant was immediately disappointed. The parties agreed the tenant very soon after notified the landlord of the deficiencies. Again, the parties disagreed as to their responses; however agreed the landlord stated they would try to improve things. The landlord articulated the situation occurred at month's end on the cusp of a busy weekend and resources could not be immediately mustered to deal with the tenant's issues, but they were committed to do so. The landlord did not dispute that it may have been portrayed to the tenant that they could take the unit or leave it, as described by the tenant. The tenant acknowledged that by this point they lost confidence in the landlord because they had been made to feel assured of better conditions. The tenant relied on the advice of others and determined to end the tenancy rather than wait for the landlord to meliorate the situation. The landlord did not effectively dispute the tenant's claims respecting the condition of the unit. They relied on the tenant's sign off on the CIR and several work requests made 10 days before the start of the tenancy for certain improvements to the rental unit in their argument the rental unit was acceptable. The landlord acknowledged they did not provide evidence the work was actually performed. Moreover, the landlord

argued the tenant did not give the landlord an opportunity to make matters acceptable to the tenant. The tenant argued they quickly lost all confidence in the landlord.

On October 03, 2016 the tenant personally gave the landlord a Notice to End the tenancy pursuant to Section 45(3). The letter provides the landlord with the tenant's written forwarding address with request for the return of the security deposit of $600.00. The tenant vacated October 04, 2016 at which time the parties conducted a mutual condition inspection of the unit and the CIR reflects the tenant's disagreement with the condition of the premises. The parties disagreed with one another as well as on the administration of the security deposit. The landlord testified they determined to keep the deposit as liquidated damages.

The tenant makes the following monetary claims as per their Monetary Order Worksheet.

The tenant seeks the return of their security deposit of $600.00. As well the tenant seeks all of their moving and travel associated costs from Manitoba to British Columbia, and return to Manitoba, in the sum of $2478.15, plus their filing fee.

Analysis

The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: ***www.gov.bc.ca/landlordtenant***

The tenant, as applicant, bears the burden of proving their monetary claims. I have reviewed all relevant submissions of the parties. On the preponderance of the relevant document and oral evidence, I find as follows on a balance of probabilities.

It must be known that pursuant to the Act a tenant is not responsible for reasonable or normal wear and tear of a rental unit. The landlord is claiming the tenant is responsible for *damage*: that is, deterioration, breakage or collapse exceeding wear and tear under normal circumstances.

Section 7 of the Act provides as follows in respect to all of the landlord's claims for loss and damage made herein:

7. Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the tenant bears the burden of establishing their claims pursuant to the test established by Section 7 above proving the existence of a loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the tenant must then provide evidence that can reasonably verify the monetary value or amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation, and to mitigate or minimize a loss claimed.

In respect to the tenant's claim for their moving costs and all associated travel costs, I find that the landlord may have failed to follow Section 20 of the Act in respect to collecting the security deposit prior to entering into a tenancy agreement, but this in itself did not amount to the tenant's determination to move to British Columbia. I do not accept the landlord provided sufficient evidence the rental unit was in the condition they intended as per their work orders. Therefore I prefer the evidence of the tenant they were provided a rental unit with certain deficiencies. I also accept the tenant placed their faith in the landlord's on-line and oral representations which when not realized caused them considerable concern and moved them to take action before giving the landlord opportunity to resolve their issues. Moreover, I do not find the landlord solely or directly responsible for the tenant's discretionary moving and travel plans or the associated costs. I find that the landlord should have taken more care to ensure that the intended rental unit for the tenant was in better condition, especially given the circumstances the rental unit was not previously viewed and the landlord knew the unit required some remediation. Regardless, I find that the landlord's conduct did not, in any relevant or significant contravention of the Act, Regulations or the tenancy agreement, give rise to the tenant's claimed costs/loss. As a result I **dismiss** this portion of the tenant's claim.

Section 38 of the Act states that if the landlord does not return the security deposit, or file for dispute resolution to retain the deposit, within 15 days of receiving the tenant's written forwarding address and does not have the tenant's written agreement to keep the deposit, the landlord *must pay the tenant double* the security deposit.

In this matter I find the tenant's right to their deposits have not been extinguished. I find that pursuant to Section 44 the tenancy ended October 04, 2016. I find the landlord was in possession of the tenant's written forwarding address on or before the same date. Therefore, pursuant to Section 38 of the Act the landlord had 15 days from October 04, 2016 to file for dispute resolution or return the tenant's deposit. The landlord did neither and has done neither but simply retained the deposit. As a result, **Section 38** of the Act states the tenant is entitled to double their deposits, which as a result I must award the tenant in the amount of **$1200.00.**

As the tenant was partially successful in their application they are entitled to recover their filing fee from the landlord for a sum award of **$1300.00.**

Conclusion

The tenant's application in part has been granted, and the balance dismissed.

I grant the tenant a **Monetary Order** under Section 67 of the Act for the amount of **$1300.00.** 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.

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: July 04, 2017

Residential Tenancy Branch