



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL MNSD MND FF  
                             MNSD MNDC FF

### Preliminary Issues

On a procedural note, once each party signed into the teleconference hearing there was a loud echo, and at times a squeal, each time a person spoke. I clarified the type of equipment each party had signed into the teleconference with to try and identify the source of the technical issues. The Landlord affirmed that they had signed into the hearing using a telephone land line and that her Agent was on an extension phone. The Tenants affirmed that they had also signed into the hearing using a telephone land line and they were each on an extension phone. The echo and squeal did not subside so I instructed all parties, including myself, to hang up and dial back into the hearing.

Once each party's telephone was reconnected to the teleconference, the line was clear and there was no echo. That being said, shortly after starting the hearing the echo and squealing suddenly appeared again. At this point I canvassed each party to determine if something had changed at their end. Each participant affirmed that they had not changed anything, were not using any other electronic equipment, were not taping the hearing, and were not using speaker phones. I then instructed the parties that if they were using cordless phones not to stand too close to each other as that could be causing the echo or feedback.

Based on the amount of time that had already been spent trying to deal with the technical issues I advised both parties that we would be moving ahead with the hearing, despite the echo and background noises. I then advised the participants that they would have to draw my attention to anything they thought they may have missed or that they could not understand. The hearing continued as I managed the telephone lines.

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlords and the Tenants. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however,

each declined and acknowledged that they understood how the conference would proceed.

The Landlords filed on August 15, 2014, seeking an Order of Possession for landlord's use and a Monetary Order for damage to the unit, site or property, to keep the security deposit; and to recover the cost of the filing fee in the amount of \$4,465.72.

The Tenants filed on September 2, 2014, to obtain a Monetary Order for: for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; double their security deposit; and to recover the cost of the filing fee from the Landlords for this application in the amount of \$11,600.00.

The hearing was conducted via teleconference and was attended by one Landlord, T.R., the Landlords' Agent (hereinafter referred to as the Agent) and both Tenants. Each party gave affirmed testimony and confirmed receipt of evidence served by each other.

The Agent introduced herself as being the Landlords' Agent. Upon further clarification she submitted that she was the Landlord's (T.R.'s) mother and a lawyer who was not currently practicing law. She confirmed that she had not previously acted as Agent for the Landlords during this tenancy and she did not have firsthand knowledge of the events that occurred during the tenancy. Based on the foregoing, I advised the Agent that she would be at liberty to present legal arguments on behalf of the Landlords; however, direct evidence would have to come from T.R. either in the form of her own testimony or through questioning. I also noted that if questions were directed to the Landlord specifically then the Landlord would be required to answer them and not the Agent.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is **relevant** to the matters before me.

#### Issue(s) to be Decided

- 1) Did the Landlords file their application for dispute resolution in accordance with the Residential Tenancy Act (hereinafter referred to as the Act)?
- 2) Have the Tenants proven entitlement to monetary compensation?

## Background and Evidence

The Tenants submitted that they were not served a copy of the Landlords' original application nor were they provided a detailed explanation of why the Landlords were claiming compensation in the amount of \$4,465.72. The Tenants stated they received a Notice of hearing letter, and a copy of a document titled "new application" which they argued was incomplete because it did not include a signature and there was no Monetary Order Worksheet included with the documents they had been served in the envelope post marked August 21, 2014.

The Tenants submitted evidence of a letter sent to the Landlords on February 16, 2015, alerting the Landlords to their concerns that they had not received a Monetary Order Worksheet and had not received any evidence that would inform the Tenants what the Landlords were claiming. The Tenants argued that they did not receive the Landlords' evidence package until February 26, 2015.

The Agent testified that the Landlords filed their application on line and signed the document in accordance with the electronic requirements set out on the Residential Tenancy Branch (RTB) website. She submitted that the application was filed using an estimated amount because the Landlords were up against the deadline for filing. The Agent argued that the Landlords had not completed all the required work and were still awaiting the final costs to be determined so they could not provide a detailed outline of the claim at the time they had filed. She confirmed that the Landlords evidence was not served to the RTB or to the Tenants until February 24, 2014.

It was undisputed that the Landlords and Tenants entered into a written fixed term tenancy agreement using the #RTB-1 form, as per the copy provided in the Tenants' evidence. The tenancy agreement stipulates that the tenancy began on July 28, 2014 for a fixed length of time: one year ending on: July 31, 2014 and section 2(b)(i) was selected which states: *the tenancy may continue on a month-to-month basis or another fixed length of time*. Rent of \$2,900.00 was due on or before the first of each month and on June 9, 2013 the Tenants paid \$1,450.00 as the security deposit. No move in condition inspection report form was completed. The Tenants provided the Landlord with their forwarding address on July 31, 2014.

The Tenants stated that now that they knew the Landlords' application had been properly filed, they wished to withdraw their request for double their security deposit and were now only seeking the return of their original security deposit amount of \$1,450.00.

The Tenants testified that on April 1, 2014 the Landlords served them with a 2 Month Notice to end tenancy for landlord's use effective July 31, 2014, which listed the following reason for issuing the Notice:

*The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.*

The Tenants submitted that they paid their rent in full, up to July 31, 2014, and vacated the property by July 31, 2014, in accordance with the 2 Month Notice (the Notice). They argued that when they moved out they were expecting to receive compensation equal to one month's rent from the Landlords. The Tenants pointed to page two of the Notice under the section for Compensation for Tenants which states: *ON or before the effective date of this Notice, the landlord must pay the tenant an amount equal to one month's rent payable under the tenancy agreement.* The Tenants argued the Landlords have not paid them this compensation so they now claim that compensation in the amount of \$2,900.00.

The Tenants asserted that the Landlords did not occupy the rental unit, as per the Notice. They pointed to their documentary evidence which included a copy of a real estate listing for the rental unit which was printed on 2014-09-05 listing the property as being sold. As such the Tenants now claim compensation equal to two month's rent in the amount of \$5,800.00.

The Landlord testified and confirmed that they served the Tenants with the Notice on April 1, 2014, by registered mail. The Notice listed an effective date of July 31, 2014 and the reason for issuing the Notice was as the Tenants had submitted. The Landlord stated that the Tenants had paid their rent in full up to July 31, 2014; they did not pay the Tenants the compensation equal to one month's rent as stated on the Notice; and they did not return the security deposit to the Tenants.

The Agent argued that the Notice was superfluous because the Landlords had obviously used the wrong Notice. She submitted that the Landlords were new to being landlords and did not know what they were up against. She pointed to the Landlords' affidavit provided in the Landlords' evidence and argued that the evidence supports that in January 2014, the parties had begun to discuss the Landlords' decision to sell the property and the Tenants having to move out at the end of July. The Agent argued that the parties were not able to reach an agreement at that time so when no agreement had been made to end the tenancy by April 2014, the Landlords issued the Notice.

The Landlord testified and confirmed that she listed the property for sale in August 2014 and accepted an offer in the last week of August 2014. She stated that they did not occupy the rental unit and although they had originally thought they would occupy the rental unit for some time during the summer months their circumstances changed and they decided to sell the property.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

#### **Landlords' Application**

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

In this case the Landlords filed their application August 15, 2014, for monetary compensation of \$4,465.72. There was no detailed description provided outlining what their claim was for and the Landlords did not serve their evidence to the Tenant or the RTB until February 25, 2014, six months after they filed their application.

I accept the Agents' submissions that the Landlords were required to file their application to keep the security deposit within 15 days of the tenancy ending and the Landlords receiving the Tenants' forwarding address. That being said, the required time limit does not exempt a party from submitting an application that clearly outlines the full particulars of the dispute.

In this case, I accept the Tenants' submission that the Landlords' application did not properly inform them of the claim that was being brought against them. If the Landlord was seeking monetary compensation for specific damages that had occurred prior to them filing their application, they ought to have provided a clear description of what those damages were (eg: \$50.00 to repair damages to walls; \$250.00 to replace missing cabinet and so on) as well as clearly indicated which amounts were estimates to be clarified at a later date. Accordingly, I found that the Landlords' application did not meet the requirements of section 59(2) of the Act, and I dismissed the Landlords' application, with leave to reapply.

The Landlords have not succeeded with their application; therefore, I decline to award recovery of their filing fee.

#### **Tenants' Application**

The Tenants withdrew their request for double their security deposit and proceeded with their request for the return of the actual security deposit. Having dismissed the Landlords application, I find the Landlords have not proven entitlement to retain the

Tenants' security deposit any longer. Therefore, I hereby order the Landlords to pay the Tenants forthwith, the amount of **\$1,450.00** (which includes interest of \$0.00), as the return of their security deposit.

Notwithstanding the Agent's submission that the Notice was superfluous, it is not enough to argue a defence that the Landlords were "new landlords" or to say they simply used the wrong Notice. The evidence included a copy of the #RTB-1 tenancy agreement form which had been used by Landlords, and which clearly references the Residential Tenancy Act in numerous locations. On page 6 of that tenancy agreement under General Information about Residential Tenancy Agreements it states: The RTA or a regulation made under the RTA, as amended from time to time, take priority over the terms of this tenancy agreement. Therefore, I find it is reasonable to conclude that the Landlords had knowledge of the existence of the Act and ought to have known they had rights and obligations that were governed by the Act.

When considering the Tenants' Application for compensation the validity of the 2 Month Notice issued April 1, 2014, is not at issue. The fact is that the Tenants were served a 2 Notice; therefore, what is at issue is simply the amount of compensation the Tenants are now entitled to for being served such a Notice.

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The undisputed evidence supports that the Tenants were served the 2 Month Notice by the Landlords and they were not provided compensation equal to one month's rent. Accordingly, I grant the Tenants' claim for compensation pursuant to section 51(1) of the Act, in the amount of **\$2,900.00**.

Section 51(2) of the Act stipulates that in addition to the amount payable under subsection (1) [*compensation equal to one month's rent for upon being served the 2 Month Notice*], if 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 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, **must pay** the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement [my emphasis added].

The undisputed evidence proves that the Tenants were served for the 2 Month Notice to end their tenancy effective July 31, 2014, for the reason that the rental unit would be occupied by the landlord or the landlord's spouse or a close family member (father,

mother, or child) of the landlord or the landlord's spouse. The Landlords listed the unit to be sold at the beginning of August 2014, and it sold on or before September 5, 2014.

Based on the above, I find that the rental unit was not use for the stated purpose for ending the tenancy that was listed on the Notice, for at least 6 months. Accordingly, I find the Tenants provided sufficient evidence to prove their claim pursuant to section 51(2) of the Act, and I award them **\$5,800.00** (2 x \$2,900.00).

I find that the Tenants have primarily succeeded with her application; therefore, I award recovery of the **\$100.00** filing fee.

### Conclusion

The Landlords' application is dismissed, with leave to reapply.

The Tenants have been awarded a Monetary Order for **\$10,250.00** (\$1,450.00+ \$2,900.00 + \$5,800.00 + \$100.00). This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that 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: March 13, 2015

---

Residential Tenancy Branch

