



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, OLC, FF

### Introduction

This hearing convened as a result of the Tenants' Application for Dispute Resolution wherein the Tenants requested an Order that the Landlords comply with the *Residential Tenancy Act*, return of double their security deposit, monetary compensation pursuant to section 51 of the *Act* and to recover the filing fee.

Only the Tenant, B.M., appeared at the hearing. She gave affirmed testimony and was provided the opportunity to present the Tenants' evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that she served the Landlords with the Notice of Hearing and the Application on July 28, 2016 by registered mail. A copy of the registered mail receipts and tracking number was provided in evidence. The tracking number for both packages is also included on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline—12 Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served by registered mail are deemed served five days later; accordingly, I find the Landlords were duly served as of August 2, 2016 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord/Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlords?
2. What should happen with the Tenants' security deposit?
3. Should the Tenants recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy initially began January 15, 2016. The parties amended the tenancy agreement on February 1, 2016 to provide that the tenancy was for a fixed length of time ending August 31, 2016. Monthly rent was \$2,400.00 per month and the Tenants paid a security deposit in the amount of \$1,200.00.

The Tenant testified that on May 27, 2016 the Landlords issued a 2 Month Notice to End Tenancy for Landlord's Use indicating the rental property had sold and requesting vacant possession by August 1, 2016 (the "Notice"). A copy of the Notice was provided in evidence.

The Tenant testified that she paid the June 2016 rent. She confirmed they did not pay the July 2016 rent as they believed they were entitled to a free month's rent pursuant to the Notice.

On June 9, 2016 the Tenants gave the Landlord a 10 day Notice to End Tenancy pursuant to section 50. In this letter they asked the Landlord to provide them with the prorated compensation in the amount of \$2,090.32. The Tenants also provided the Landlord with their forwarding address in this letter and requested return of their security deposit.

The Tenant confirmed that the Landlord failed to perform a move in and move out condition inspection.

In the within hearing the Tenants sought return of double their security deposit in the amount of \$2,400.00 in addition to the sum of \$2,090.32 representing the prorated amount for the balance of July 2016.

The Tenants also sought recovery of the filing fee in the amount of \$100.00.

## Analysis

The Tenants seek return of double the security deposit paid (\$1,200.00) for a total of \$2,400.00.

Section 38 of the *Residential Tenancy Act* deals with the return of such deposits and provides as follows:

### **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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report*]

*requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].*

- (6) If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlords could retain any portion of the security deposit.

There was also no evidence to show that the Landlords applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, as required under section 38.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlords also extinguished their right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

The security deposit is held in trust for the Tenants by the Landlords. The Landlords may only keep all or a portion of the security deposit through the authority of the Act, such as the written agreement of the Tenants an Order from an Arbitrator.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$2,400.00**, comprised of double the security deposit (2 x \$1,200.00).

The Tenants also seek compensation pursuant to sections 49, 50 and 51 of the *Residential Tenancy Act*.

In the case before me the Landlords issued the Notice pursuant to section 49; the relevant portions of that section read as follows:

**Landlord's notice: landlord's use of property**

- 49** (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
  - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
  - (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.
- (5) A landlord may end a tenancy in respect of a rental unit if
- (a) the landlord enters into an agreement in good faith to sell the rental unit,
  - (b) all the conditions on which the sale depends have been satisfied, and
  - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
    - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
    - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

In the Tenants letter of June 9, 2016 they correctly note that they were permitted to give the Landlords 10 days-notice to end the tenancy pursuant to section 50 which reads as follows:

**Tenant may end tenancy early following notice under certain sections**

- 50** (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by
- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
  - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
- (3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

As the Tenants received a notice pursuant to section 49, they were entitled to monetary compensation pursuant to section 51, which reads as follows:

**Tenant's compensation: section 49 notice**

**51** (1) 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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

Section 50 and 51 read together provide that a Tenant who gives a 10 day notice is entitled to a prorated amount of compensation. Accordingly, I find the Tenants are entitled to the **\$2,090.32** they seek pursuant to sections 49, 50 and 51.

As the Tenants have been entirely successful in their claims, they are also entitled to recovery of the **\$100.00** filing fee.

Conclusion

The Tenants are entitled to compensation in the amount of \$2,400.00 representing return of double their security deposit pursuant to section 38(6) of the *Residential Tenancy Act*, as well as \$2,090.32 pursuant to section 51 of the *Act*, and recovery of the \$100.00 filing fee for a total Monetary Order in the amount of **\$4,590.32**.

This Monetary Order must be served on the Landlords and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 26, 2017

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Residential Tenancy Branch