



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$6,445.20. This claim is for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, including return of double the security deposit, and to recover the cost of his filing fee for this Application.

The Tenant, the Landlord, the Landlord's son, B.M., and the Landlord's lawyer, A.S., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness for the Tenant was also present and provided affirmed testimony.

During the hearing, the Parties were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and that they had sufficient time to review it prior to the hearing. The Landlord agreed in the hearing that the Tenant served her with the Application and documentary evidence on January 24, 2019.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

### Issue(s) to be Decided

- Did the Tenant pay a security deposit to the Landlord, and if so, in what amount?

- Is the Tenant entitled to the return of a security deposit, and if so, in what amount?
- Is the Tenant entitled to a monetary order under the Act, and if so, in what amount?
- Is the Tenant entitled to the recovery of the \$100.00 filing fee for this Application?

### Background and Evidence

The Parties agreed that the Tenant rented the upstairs suite at the residential property owned by the Landlord (the "Rental Suite").

Neither Party provided a copy of a written tenancy agreement for this tenancy. The Tenant's evidence is that the tenancy started on March 1, 2014 with a monthly rent of \$1,200.00, payable on the first day of each month. The Tenant said he signed a tenancy agreement and paid a security deposit to the former landlord (the current Landlord's deceased husband). However, the Tenant said he does not have any documentary evidence to support his claim that there was a written tenancy agreement or that he paid a security deposit.

The Parties agreed that the rent at the end of the tenancy was \$1,310.00 per month. The Parties agreed that the Tenant vacated the Rental Unit on March 1, 2018, although he was not required to leave until the end of March 2018, pursuant to the Two Month Notice to End Tenancy for Landlord's Use of Property dated January 26, 2018 (the "Two Month Notice"). The Parties agreed that the Tenant had arranged for a new accommodation as of March 1, 2018.

The Parties agreed that the Landlord served the Tenant with the Two Month Notice, which I find is:

- signed,
- dated,
- specifies the Rental Unit address,
- gives the effective vacancy date as April 1, 2018,
- specifies the ground for the notice as being that the rental unit will be occupied by the Landlord or the Landlord's close family member, and
- is in the approved form.

In his Monetary Worksheet, the Tenant claims the following compensation from the Landlord:

1. \$2,620.00 for two months' rent in the rental unit;
2. \$1,000.00 for damage deposit at his new accommodation;
3. \$1,525.20 for his moving costs;
4. \$1,200.00 for double the return of his security deposit; and
5. \$100.00 for recovery of the filing fee.

The Tenant seeks \$6,445.20 in total from the Landlord in this Application.

### Security Deposit

In the hearing, the Tenant said that the money is less important to him, but he applied for relief in order to recover the costs he incurred from having to move. He said he was initially pushing his security deposit grievances to the side, because he does not have the requisite paperwork to prove this claim. He said his Application is more about whether the Landlord behaved in good faith in the grounds she set out for having issued the Two Month Notice.

The Tenant said that when the Landlord called him on January 18, 2018, to tell him that her husband had died, he was shocked and saddened. He said that the former landlord had been very kind. The Tenant said that the Landlord called again on January 24, 2018, to advise him that because of her financial situation, she would have to evict the tenants of the residential property, so that she and her son could move into the suites.

The Tenant said that the Landlord advised him that she had to serve him with the eviction notice and was looking for a suitable time to drop by in order to serve him in person. The Tenant said: "Sympathetic to how much [the Landlord] had on her plate, I told her that I would consider the phone call the official notice and that it would be fine to mail the notice to me." He said the Two Month Notice arrived a few days later.

The Tenant said in his written statement:

At the time I had no reason to question the veracity either of what [the Landlord] advised me or of the details of the eviction notice. As my tenancy drew to an end, I had the first inkling that [the Landlord] was not dealing fairly with me. We were discussing arranging a move-out inspection/return of my damage deposit when [the Landlord] advised me: '[her husband] never took damage deposits,' and she thus found it highly unlikely that I had paid a damage deposit upon moving into [the Rental Unit address]. She further stated she had found nothing indicating that [her husband] had ever received a damage deposit from me.

[The Landlord] also insisted that [her husband] never used rental agreements, though my recollection was firmly that I had signed one, and had paid a damage deposit. I was unable to find the document - the only proof of the \$600 cash I had paid as my damage deposit. I decided to not press this matter partially because of the emotional stress [the Landlord] was under, but also owing to my need for a good reference from [the Landlord].

The Tenant said that the former tenant of the other suite in the residential property had documentation for his claim for return of the security deposit; the Tenant said that this establishes the likelihood that taking security deposits was the practice of the former landlord. There is no other evidence before me of the circumstances of the other tenant in the residential property.

*Landlord's Use of Property*

In her written submission, the Landlord said that on or about April 2, 2018, her son moved into the Rental Unit. The Landlord submitted a photograph of her son's driver's licence and a screen shot of banking information with the Rental Unit address on it, as evidence of his having moved into in the Rental Unit.

In her written submission, the Landlord also said that she started moving her belongings into the basement suite. She said she "lived in the Basement Suite for approximately two months before her physical health deteriorated terribly." She said she was placed on long-term disability and required knee surgery. The Landlord submitted a letter from her doctor explaining her situation. The doctor's letter states:

**Consultation Request**

<b>Consult to:</b>	<b>Patient:</b>	DOB
To Who It may Concern	[Landlord's name	[health card
	Address]	number]
		[telephone number]

Please see this patient (whom I saw on 01-Nov-2018) in consultation regarding:

After the above patient's husband passed away she was diagnosed with depression, anxiety, and she has fibromyalgia, PTSD and knee pain awaiting surgery.

She moved into a rental house on John's street in Vancouver and had to move

back due to her medical condition, and escalating symptoms and frequent medical visits.

Thank you

Sincerely,  
[signature]  
[doctor's name, MSP #]

The Landlord's written submission further states that after she moved out of the basement suite, her son also moved out:

. . .because his entire reason for living there was to care for his mother. However, [the Landlord's son] did not re-rent the Suite right away, and continued to use it.

[The Landlord's son] retained the Suite through September 2018, and used it for storage of his personal belongings, [the former landlord's] belongings, and for his own use. He rented a room in the upstairs unit of the property for a couple months in the summer of September 2018, but did not rent out the Suite to a new tenant. The person who rented a room from [the Landlord's son] is the person referred to in the Tenant's materials as being the new upstairs tenant, but was only ever a temporary occupant.

The Suite was rented to a new tenant on or about September 15, 2018, which was six and a half months after the Tenant moved out of the Suite. Attached as **Exhibit H** is a copy of the signature page showing when the new tenants signed an agreement to rent the Suite.

In the hearing the Tenant said:

I am trying to prove that [the Landlord and her son] never did move in and what they've most likely done is use the 'use of family' clause to evict us so that they could jack the rent off. It was well below market value. [The former landlord] was fair and it was well below market value.

The Tenant said that the Landlord's son retained his West Georgia address. The Tenant submitted a copy of an envelope with the Landlord's son's name and his West Georgia address hand written on the return portion of the envelope. The Tenant noted that the envelope was post marked on April 5, 2018. The Tenant did not explain how he

obtained this envelope.

The Landlord said that her son has more than one address and that a person can have more than one place where they get mail sent.

The Tenant submitted a letter dated December 7, 2018, from, L.S., a neighbour of the Rental Unit (the “Neighbour”), regarding the evictions from the residential property (the “Letter”). In the Letter the Neighbour said she became aware of the residential property tenants having received eviction notices in February 2018. The Neighbour said that the tenants told her that they were being evicted, so that the Landlord and her family members could occupy the suites in the house.

The Neighbour said that after the tenants vacated their suites “I was concerned about the legitimacy of the eviction notice, as neither of their suites ...were immediately occupied and remained vacant for a number of weeks.” She said that during this time, the Landlord’s son was at the house with a small group of people, seemingly inspecting renovation, repair and painting work that had been going on. She said she introduced herself to the man she assumed was the Landlord’s son and told him, “I understand your mother is going to be our new neighbour. After a surprised look, [he] replied, ‘Oh, that’s probably not happening now.’ Shortly after that conversation, new tenants moved into the upstairs and basement suites in the house. Neither of whom were [the Landlord or her son].”

In the hearing, the Landlord’s son said that the Neighbour “cherry picked interactions with her letter. I’ve seen her more than 40 or 50 times – I was seeing her 3 or 4 times a week - peeking over the fence.”

In the hearing, the Neighbour said “I don’t remember what was in that letter. I stand by my testimony. There’s no reason to take your side over anybody’s side; we’re not friends. There is no reason for me to lie on your behalf.”

## Analysis

### Security Deposit

The Tenant’s positions in the hearing and in his Application seem inconsistent on their face. In the hearing, he said that initially, he was not pursuing recovery of the security deposit, as he did not feel he had sufficient evidence that he had paid one to the original landlord in the first place, despite his recollection that he had paid one. However, his

belief in this regard evolved, as he provided evidence that another tenant had documentation of having paid a security deposit for a suite in the same residential property. I find this adds reliability and credibility to the Tenant's recollection of having paid a security deposit, and that it was more likely than not the former landlord's practice to collect security deposits for this residential property. I find on a balance of probabilities, therefore, that the Tenant paid a security deposit of half the original monthly rent paid of \$600.00.

Section 38(1) of the Act states the following:

**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.

The Tenant provided his forwarding address in his Application, where it set out his address for service of documents. The Application with this information was served on the Landlord on January 24, 2019. The tenancy ended on March 31, 2019, at the latest.

The Landlord was required to return the \$600.00 security deposit fifteen days after March 31, 2019, namely by April 15, 2019, or make an application for dispute resolution to claim against the security deposit. The Landlord has provided no evidence that she returned any amount or made an Application to claim against the security deposit at all. Therefore, I find the Landlord has failed to comply with her obligations under Section 38(1).

Since the Landlord failed to comply with the requirements set forth in Section 38(1) and as per Section 38(6)(b), I find the Landlord must pay the Tenant double the amount of the security deposit. There is no interest payable on the security deposit. I, therefore, award the Tenant **\$1,200.00** in this regard.

Landlord's Use of Property

Section 49 of the Act allows a landlord to end a tenancy for “landlord’s use of property”. Policy Guideline #2 (“PG #2”) provides guidance on addressing the requirements for ending a tenancy for landlord’s use of the property. PG #2 says that the Act allows a landlord to end a tenancy under section 49, if the landlord “intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit.”

PG #2 further addresses “good faith”, as follows:

Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement. In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

Documentary evidence that may support that a landlord is acting in good faith includes, but not limited to:

- a notice to end tenancy for a rental unit that the landlord or close member is moving out of ((for RTA section 49 (3) or section 49 (4));

If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

...



Both the RTA and MHPTA require a landlord who gives notice to end a tenancy for landlord's use to pay compensation to the tenant for ending the tenancy.

[emphasis added]

The Tenant's evidence includes:

- a neighbour who said that she did not see the Landlord or her son living in the residential property;
- the new tenants moved into the Rental Unit six and a half months after the Tenant vacated the Rental Unit; and
- an envelope post marked April 5, 2018, with the Landlord's son's West Georgia return address on it.

However, the Landlord said that she and her son did not move into the suites in the residential property until approximately April 2, 2018. Further, the Landlord's evidence is that her son changed the address of his driver's license to the Rental Unit address and had banking information with the Rental Unit address on it. The Landlord explained that she intended to move into the residential property for financial reasons, after her husband passed away. The Landlord submitted medical reports substantiating her position that she needed ongoing assistance from her son, if she was going to live in the Rental Unit. Ultimately, given her deteriorating health, the residential property proved to be an inappropriate place for the Landlord to live, and she and her son returned to their former residences.

When I consider the specific evidence before me, overall, I find that it is more likely than not that the Landlord intended in good faith to move into the residential property that housed the Rental Unit. I, therefore, find that the Tenant is unsuccessful in his Application in this regard.

Further, the Tenant provided no authority or basis for claiming moving expenses or security deposit in his new accommodation, so I dismiss these claims without leave to reapply.

Given that the Tenant is partially successful in his Application, I award him recovery of the **\$100.00** filing fee.

### Conclusion

The Tenant's claim for recovery of double the security deposit is successful in the

amount of \$1,200.00. The Tenant's claim for compensation for other damage or loss against the Landlord is unsuccessful. The Tenant is awarded recovery of the \$100.00 filing fee for this Application from the Landlord.

I grant the Tenant a monetary order under section 67 of the Act from the Landlord in the amount of **\$1,300.00**.

This order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 22, 2019

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Residential Tenancy Branch