



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNDCT, MNSD

### Introduction

This hearing convened as a Tenants' Application for Dispute Resolution, filed on March 16, 2019 wherein the Tenants requested monetary compensation from the Landlord pursuant to section 51(2) of the *Act*, return of double the security deposit paid and recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on July 4, 2019. The hearing did not complete within the scheduled time and was adjourned to August 22, 2019.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective 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.

### Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord pursuant to section 51(2) of the *Act*?
2. What should happen with the Tenants' security deposit?
3. Should the Tenants recover the filing fee paid for their Application?

Background and Evidence

The Tenants provided a copy of the tenancy agreement indicating that this tenancy began May 1, 2016. At the time rent was \$2,100.00 per month. The Tenants also paid a \$1,050.00 security deposit.

In support of the application, the Tenant, L.S., testified as follows. He confirmed that at the time the tenancy ended the rent was \$2,170.00.

Introduced in evidence was a copy of the Notice indicating it was issued on March 21, 2018 and was to be effective June 1, 2018.

Introduced in evidence was a copy of a letter from the Tenant T.G. dated May 30, 2018 in which the Tenant provided his forwarding address in writing and requested return of the security deposit.

The Tenants vacated the rental unit on June 1, 2018.

L.S. stated that when the tenancy ended they only received \$700.00 from the Landlord for their security deposit. L.S. confirmed that they did not agree to the \$350.00 in deductions to the security deposit.

L.S. alleged that the Landlord's family did not reside in the rental unit; rather the Landlord rented the unit to others. L.S. further testified that three days after they moved out of the rental unit, T.G. spoke to people who were there when they moved, out and also at that time appeared to be living at the rental unit. Introduced in evidence was a photo from a popular social media site of two of these people who the Tenants allege were living in the premises.

L.S. also testified that he went by the rental unit to retrieve mail the back yard was full of people who were clearly not related to the Landlord. L.S. confirmed that they had met the Landlord's family before and there was no sign that they were living there. L.S. stated that they spoke to the new renters when he retrieved his mail although he confirmed he did not ask them if they were tenants. Following his visit to the rental unit to retrieve mail he received an email from the Landlord sent November 23, 2018, wherein she wrote:

"Everything that comes in the mail gets returned to sender. Don't come to the house looking for your mail because it won't be there. I was told you came through the gate like you still live there."

L.S. stated that prior to leaving he brought up his concerns that the Landlord was not in fact intending to use the property for her family.

The Tenant T.G. also testified. He stated that he took the photo of the new renters on the day he went to get the mail, on August 11, 2018. T.G. confirmed that he had met one of the women on June 1, 2018 the day they moved out, and the day the new tenants moved in. He continued that on August 11, 2018 that he went into the back door to speak to the ladies who were there, who he described as smoking and appearing very comfortable. He also noted that the rental unit had not been renovated, which the Landlord stated she intended to do prior to her parents moving in.

T.G. also stated that on the day they moved out, the neighbour said to T.G. that he was "sorry this had to happen this way". T.G. understood the comment was in regards to the Tenants having to move out to facilitate the new renters moving in. T.G. claimed that the Landlord was employed by the neighbour at the time of the eviction and that it was his impression that the neighbour also employed the new tenants, as well as sponsoring them for their citizenship with Canada, such that he was apologizing for how these employees were displacing them.

T.G. also testified as to the day they moved out and the new renters moved in; he stated that he observed the new tenants had bottles of champagne, DJ equipment, shot glass roulette table such that it did not appear as though the Landlord's elderly parents were moving in. T.G. stated that he knew they were not related to the Landlord as they were not of the same ethnicity and they were new to the country. Further, T.G. stated that he had met the Landlord's parents several times throughout the tenancy and had several conversations with them. He estimated that the Landlord's parents are in their

70's. He further confirmed that on June 1, 2018, the day they moved out and on August 11, 2018, he did not see the Landlord's parents.

T.G. stated that he only moved a short distance away and thus drives past the rental unit several times a week; he further stated that during those driveby's he never saw the Landlord's parents there. He confirmed that he saw what appeared to be people talking loudly, with drinks in hand at the house late into the evening.

T.G. also confirmed that he also did not receive his \$350.00 security deposit. He informed the Landlord that she had to pay double, or \$700.00. T.G. stated that the Landlord indicated that she would only return \$500.00 as she believed the Tenants were responsible for repairing damage to the window screens (this was indicated in communication between the parties which was included in evidence by the Tenants).

Following this communication, the Landlord asked the Tenant to pick up a box at the post office. He stated that he went to pick it up and it was a brown box that weighed about 20 pounds, sounded like it was full of screws, and upon which two notes were provided; the first note had stars written around the word 'IMPORTANT' and the following written on it:

*"IMPORTANT*

*Please do NOT release box until T.G. provides I.D. and signs letter that will be provided.  
Thanks!!"*

The second note read as follows:

*"June 21, 2018*

*I, T.G., received in turn from S.W., \$500 security deposit refund in good order.*

---

*T.G."*

T.G. stated that he did not sign for the box as he felt it was a "set up".

T.G. stated that following his attendance at the postal outlet he had the following text exchange with the Landlord:

*"What is this, I am not signing for a box of screws."*

*"It's your money. All \$500.00 not screws. I wouldn't do that. You wanted to get paid, you are getting paid."*

T.G. stated that other than the heavy box, he did not receive any further response from the Landlord regarding his security deposit.

At the hearing on July 4, 2019 the Tenants indicated that the Tenant R.M. would also be testifying; when the hearing reconvened on August 22, 2019 R.M. as not present. The Tenants confirmed they did not feel his testimony was required.

As well, a discussion occurred during the July 4, 2019 hearing regarding the Landlord's parents attending the hearing to provide evidence. At that time the Landlord indicated that her parents did not speak English as their first language. Additional time was set aside to accommodate the need for translation. Despite this, when the hearing reconvened the Landlord's parents did not call into the hearing. The Landlord stated that her parents are aware of the application.

In response to the Tenant's claims the Landlord testified as follows.

The Landlord stated that three months prior to June 1, 2018 she gave the Notice to the Tenants because her parents were moving in. The Landlord stated that the Tenants' allegation that they were going to do renovations was not true.

The Landlord further testified that her parents moved into the rental unit on June 1, 2018. The Landlord claimed that the people the Tenants saw at the rental unit were helping their parents move into the rental. She stated that that the Tenants left a large number of pieces of furniture and other items on the property and as such the Landlord's parents asked the Landlord's friends to help move these items.

The Landlord claimed that she misplaced the photos which were provided by the Tenants in evidence and as such she could not say who the people were that they claimed to have seen on the date they attended to pick up their mail. She did, however, concede that the people who helped her parents move, were in fact employed by the neighbour, but stated they never lived at the house.

In terms of the Tenants' allegation that when the new tenants moved in they brought champagne, a roulette table, the Landlord stated that she did not see this, there is no roulette table at the rental property and she has no idea what they are talking about.

The Landlord stated that her parents moved out “a few months ago”, possibly in April or May of 2019. She stated that they moved into her brother’s house which was being built.

The Landlord confirmed that currently there are a couple of people living downstairs renting out one side of the basement; she stated that there is no one in the other side. The upstairs is rented by some of the Landlord’s friends. The Landlord stated that the friends who live upstairs are not the ones who helped her parents move in.

In terms of the Tenants’ request for return of the balance of their security deposit the Landlord confirmed that she did not have the Tenants permission to retain \$350.00 of the \$1,050.00 security deposit. She stated that she was not aware that she had to have their permission to retain those funds. She also confirmed that she did not make an application for dispute resolution to retain the remainder of the deposit.

The Landlord stated that she had an agreement with T.G. that she would return \$500.00. She confirmed that she returned the \$500.00 deposit in coins which is what was in the box. She stated that she did so as she was “p\*\*\*d off” with the Tenants because of how much stuff they left on the property. She stated that she felt he was being petty and she decided she would also be petty.

The Landlord confirmed that the Tenant did not retrieve the \$500.00.

The Tenant, T.G., replied as follows. The Tenant noted that the Landlord speaks Cantonese and could have interpreted for them.

The Tenant also stated that the friends who were there were allegedly there to remove the Tenants’ abandoned property, but they were there at that time the Tenants were moving out such that they would not have known that there were any abandoned items as the Tenants had not fully moved out.

### Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant)

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenants have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The Tenants seek monetary compensation from the Landlord pursuant to sections 49 and 51(2) of the *Residential Tenancy Act*. At the time the Notice was issued sections 49 and 51(2) read as follows:

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

**49** (1) In this section:

**"close family member"** means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

**"family corporation"** means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

**"landlord"** means

- (a) for the purposes of subsection (3), an individual who
  - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
  - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
  - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
  - (ii) holds not less than 1/2 of the full reversionary interest;

**"purchaser"**, for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(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.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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.

(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.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit;

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

(c) convert the residential property to strata lots under the [Strata Property Act](#);



(d) convert the residential property into a not for profit housing cooperative under the [Cooperative Association Act](#);

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

(f) convert the rental unit to a non-residential use.

(7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

#### **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.

(2) In addition to the amount payable under subsection (1), if

(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

(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.

As noted above, section 49 of the *Act* permits a landlord to end a tenancy when the landlord, or the Landlord's close family intend in good faith to occupy the rental unit.

Guidance can also be found in the *Residential Tenancy Branch Policy Guideline 2*, which provides in part as follows:

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

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 the Tenancy.

...

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to end Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

[Reproduced as written.]

The Landlord testified that she issued the Notice so that her parents could move into the rental unit.

The Tenants allege the Landlord did not use the property for the stated purpose. They submit that instead of her elderly parents moving in, the Landlord rented the unit to others. They testified that on the date they moved out, these renters moved their items into the rental unit, including bottles of champagne, DJ equipment, and a drinking game such that it did not appear as though the Landlord's elderly parents were moving in. The Tenants further testified that they did not see the Landlord's parents when they drove by the property after the tenancy ended (which they did on numerous occasions as they only moved a short distance away); rather they saw younger people drinking and socializing at the rental unit. As well, when the Tenants attended to retrieve their mail sometime after the tenancy ended, these alleged renters were present.

The Landlord testified that the younger people observed by the Tenants were there to help her parents move. She denied they rented the unit.

As noted previously, the hearing occupied two separate days. At the conclusion of the first hearing on July 4, 2019, the Landlord indicated her parents would be testifying at the continuation. When the hearing reconvened on August 22, 2019, the Landlord's parents were not in attendance. The Landlord's reasoning for her parent's absence was

that English was not her parent's first language. Notably, this language issue was discussed at the July 4, 2019 hearing at which time the Landlord indicated she would need to interpret for her parents. In any event, the Landlord's parents did not call into the hearing to provide testimony as to whether they moved into the rental unit.

In the case before me I find that the Landlord has failed to meet the burden of proving that her parents moved into the rental unit. On balance I find it more likely that the Landlord re-rented the unit to others. I therefore find the Landlord did not use the rental property for the purpose stated on the Notice. In coming to this conclusion, I am persuaded by the testimony of two tenants who described the items which were moved into the rental unit on the day they moved out, as well as their observations when they retrieved mail from the rental unit and when they drove by the rental unit after the tenancy ended.

In addition, I am persuaded by the fact that the Landlord failed to provide any documentary evidence to support a finding that her parents resided in the rental unit, such as bills or mail addressed to them at that address. Further, the Landlord was aware of the nature of the Tenants' claims after the first hearing, and indicated she would be calling her parents as witnesses to refute the Tenants' claims. I find it likely that the Landlord did not call her parents as witnesses as her parents were unwilling to support her claim that they moved into the rental unit.

For these reasons I find the Tenants are entitled to monetary compensation pursuant to section 51(2). As monthly rent was \$2,170.00 at the time the tenancy ended, the Tenants are entitled to the sum of **\$4,340.00**.

The Tenants also seek return of double their security deposit. The evidence confirms that the Landlord returned \$700.00 to the Tenants and retained \$350.00 without their consent. When the Tenants informed the Landlord that they would be entitled to seek double the deposit paid, the Landlord returned \$500.00 to the Tenant in coins.

Pursuant to sections 8 and 9 of the *Currency Act*, R.S.C., 1985, c. C-52, coins are not legal tender for payment of money in the amount of \$500.00; for greater clarity I reproduce those sections as follows:

**Legal tender**

- 8 (1)** Subject to this section, a tender of payment of money is a legal tender if it is made
- (a)** in coins that are current under section 7; and

(b) in notes that are current under section 7.1.

### **Limitation**

(2) A tender of payment in coins referred to in subsection (1) is a legal tender for no more than the following amounts for the following denominations of coins:

- (a) forty dollars if the denomination is two dollars or greater but does not exceed ten dollars;
- (b) twenty-five dollars if the denomination is one dollar;
- (c) ten dollars if the denomination is ten cents or greater but less than one dollar;
- (d) five dollars if the denomination is five cents; and
- (e) twenty-five cents if the denomination is one cent.

As such, I find that the Landlord only returned the sum of \$700.00 to the Tenants and retained \$350.00 without the Tenants' consent.

The Tenants apply for return of their security deposit pursuant to section 38 of the *Residential Tenancy Act* which reads 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 testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenants' evidence that they did not agree to the Landlords retaining any portion of their security deposit.

I find, pursuant to section 90 of the *Act*, that the Landlord received the Tenants' forwarding address on June 5, 2018, five days after mailing the letter dated May 30, 2018. The evidence confirms that the Landlord failed to return the full deposit Tenants and failed to apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, as required under section 38(1) of the *Act*.

The security deposit is held in trust for the Tenants by the Landlord. If the Landlord believes they are entitled to monetary compensation from the Tenants, they must either obtain the Tenants' consent to such deductions, or obtain an Order from an Arbitrator

authorizing them to retain a portion of the Tenants' security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

I therefore find the Tenants are entitled to double their security deposit. As the Landlord returned the sum of \$700.00 from the \$1,050.00 security deposit, that \$700.00 must be considered in any monetary award I make.

*Residential Tenancy Policy Guideline 17—Security Deposit and Set Off* provides as follows:

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ( $\$400 \times 2 = \$800$ ), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ( $\$800 - \$275 = \$525$ ).

- Example B: A tenant paid \$400 as a security deposit. During the tenancy, the parties agreed that the landlord use \$100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is \$600.00 ( $\$400 - \$100 = \$300$ ;  $\$300 \times 2 = \$600$ ).

Example C: A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.

The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is \$350 ( $\$400 - \$100 = \$300 \times 2 = \$600$  less amount actually returned \$250).

The facts before me most closely resemble Example A above. As such, the Tenants are entitled to the sum of **\$1,400.00** calculated as follows:

$$\begin{aligned}
 & \$1,050.00 \text{ (the amount paid as a security deposit)} \\
 & \quad \times 2 \\
 & = \$2,100.00 \\
 & - \$700.00 \text{ (the amount already returned to the tenants)} \\
 & = \mathbf{\$1,400.00.}
 \end{aligned}$$

As the Tenants have been substantially successful in their application I also find they are entitled to recover the \$100.00 filing fee.

### Conclusion

The Tenants are entitled to a Monetary Order in the amount of **\$5,840.00** for the following:

2 x monthly rent of \$2,170.00 pursuant to sections 49 and 51(2)	\$4,340.00
2 x \$1,050.00 (security deposit paid) - \$700.00 (amount returned) pursuant to section 38 of the <i>Act</i>	\$1,400.00
Recovery of the filing fee pursuant to section 72	\$100.00
<b>TOTAL AWARDED</b>	<b>\$5,840.00</b>

The Monetary Order must be served on the Tenants 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: September 10, 2019

---

Residential Tenancy Branch