



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1136183 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNSD, MNDCT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on September 11, 2019, in which the Tenants sought return of double the security and pet damage deposit paid as well as recovery of the filing fee. By amendment dated December 27, 2019, the Tenants requested monetary compensation pursuant to section 51(2) of the *Residential Tenancy Act* and increased their monetary claim to \$14,400.00.

The hearing of the Tenants' Application occurred over three days on January 14, 2020, March 19, 2020 and April 21, 2020. Both Tenants called into the hearing, as did, K.S., a director for the numbered company named as the Landlord, and the Landlord's legal counsel, S.S. All in attendance 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 parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to return of double the security and pet damage deposit paid?

2. Are the Tenants entitled to monetary compensation from the Landlord pursuant to section 51(2) of the *Residential Tenancy Act*?
3. Should the Tenants recover the filing fee?

Background and Evidence

This month to month tenancy ended July 31, 2019.

The Tenant, T.S. testified that at the time the tenancy ended they sent a text message to the Landlord with their forwarding address and in this message she asked the Landlord to confirm receipt. The Tenants received confirmation from the Landlord that they received the text. T.S. then called the Residential Tenancy Branch and was advised that delivery by text message was insufficient and to send a letter. The Tenant then sent a letter to the Landlord by Priority Post on August 19, 2019. A copy of this letter, as well as the returned envelope was provided in evidence before me. The Tenant testified that the Landlord did not retrieve the letter.

T.S. further testified that they received their security and pet damage deposit from the Landlord on September 13, 2019, which had been dropped through her mother's mail slot on that date.

T.S. confirmed that she called the Residential Tenancy Branch and was advised to cash the cheque but request double the deposits as the funds were not returned within 15 days of receipt of their forwarding address.

In terms of their request for 12 months compensation pursuant to section 51(2), T.S. stated that on May 28, 2019, the Landlord told them that the property had been sold and the new owners wanted vacant possession. She further stated that two days later the Landlord told them that his father was moving in.

On May 31, 2019 the Tenants received the formal 2 Month Notice to End Tenancy for Landlord's Use (the "Notice"). The reasons cited on the Notice were as follows:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individuals' spouse).

- The landlord 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.

T.S. confirmed that the Tenants do not believe that the Landlord's father moved into the rental property. She also noted that in written submissions K.S. wrote that *he* moved into the property. T.S. further stated that the Landlord told her that he didn't want to be a landlord and repeatedly informed them that "the property was up for redevelopment".

T.S. also testified that they drove by the property many times and they did not see any evidence that anyone was living there—no lights, no cars, no activity. T.S. confirmed that they have friends in the neighbourhood of the rental unit and these friends also reported that no one was living there after the tenancy ended. She further noted that there is also graffiti on the house which suggests it is vacant.

T.S. testified that to her knowledge, the gas was also turned off on the property due to non payment. She stated that her husband, E.S., went by the house on July 24, 2019 to get mail and saw notices on the property regarding the gas.

In response to the Tenant's claims the Director of the company, K.S., testified as follows.

In terms of the Tenants' request for return of double their security and pet damage deposit, K.S. claimed that he returned the Tenants security and pet damage deposit during the second week of August 2019. He stated that he sent the funds to the Tenants by mail to the address the Tenants provided to him. He claimed that the envelope was returned, although he did not save the envelope.

K.S. also testified that he asked the Tenant, E.S., to pick up the cheque at the end of August 2019.

K.S. further testified that he went to the Tenant's mother's house and no one was there. He then went back 2-3 days later, and again no one was home, but this time he dropped the cheque off through the mail slot at the Tenant's mother's house. He stated that he texted the Tenants to confirm they received it and they stated that they were going to go through the tenancy board.

In terms of the Tenants' request for 12 months' rent pursuant to section 51(2) and the Tenants' allegation that he did not use the property for the stated purpose, K.S. testified

that after the tenancy ended, he moved into the rental property. He first stated that he moved in the first week of August 2019 and then later in his testimony he testified that he moved into the rental property in late August 2019. He stated that he has had parties in the property and submitted letters from two friends confirming that they were at the property for such social gatherings.

In terms of the Tenants' allegation that the gas was disconnected, K.S. testified that only one of the two gas meters at the property was turned off.

K.S. confirmed that he sold the rental property at the end of August 2019 and moved out during the second or third week of September 2019. He claimed that he did not list the property, but rather sold it privately.

Analysis

After consideration of the testimony and evidence before me, the submissions made, and on a balance of probabilities I find as follows.

I find the Tenants paid a \$550.00 security deposit and a \$550.00 pet damage deposit for a total of \$1,100.00 in deposits (the "Deposits").

The Tenants apply for return of double the Deposits 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.

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

I find the Tenants sent the Landlord their forwarding address by priority post mail on August 19, 2019. While the Landlord failed to retrieve this letter, pursuant to section 90 of the *Residential Tenancy Act*, documents served by mail are deemed served five days later; as such, I find that the Landlord received the Tenants' forwarding address in writing on August 24, 2019.

I accept the Tenants' testimony that they did not receive their Deposits back until September 13, 2019. I prefer their testimony in this regard over that of K.S. While K.S. claimed that he sent the Deposits to the Tenants at the end of August 2019 he failed to provide any documentary evidence to support his testimony. Considering the import of the date in which those funds are returned, on balance I find it more likely that he simply neglected to return the funds within the 15 days required by section 38 of the *Act*.

As I have found the Landlord failed to return the Deposits within 15 days as required by section 38(1), the Tenants are entitled to return of double their Deposits pursuant to section 38(6). The evidence before me indicates the Tenants received \$1,100.00 from the Landlord, accordingly, they are entitled to a further **\$1,100.00**.

I will now address the Tenants' claim for compensation pursuant to section 51(2). This section provides as follows:

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)Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a)steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b)the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3)The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case K.S. claimed he moved into the rental unit in August of 2019 and resided there until the middle of September 2019 at which time he sold the property. This was supported by one of his friends who wrote a letter on his behalf.

The Tenants allege the property remained vacant. The testified that they did not witness any activity which would suggest that someone lived there, the gas utility was cut off and the rental property was marked with graffiti.

Even if I prefer K.S.'s testimony, at best K.S. resided in the rental unit for a maximum of six weeks after which it was sold.

The effective date of the Notice was July 31, 2019.

The reasons this tenancy was ended, according to the Notice was that the Landlord, or a close family member intended to occupy the rental unit.

This was not a case where the Landlord ended the tenancy to facilitate renovations, repairs or demolition as provided for in section 49(6) or to provide vacant possession to a seller as provided for in section 49(5). I find that section 51(2)(a) is more applicable to such situations, as one can accomplish the act of renovation, repair or demolition, or selling.

Conversely, I find section 51(2)(b) is more applicable to the current case, and more generally to section 49(3) and (4) Notices when the intention is for a person to *occupy* the rental unit, as I find occupation is a *use* of the property.

To allow a Landlord, or their close family member, to reside only briefly in the property and then sell it, is contrary to the intention of section 51(2)(b) which requires the property be used for "at least 6 months' duration" after the effective date of the notice.

I therefore find the Landlord did not use the rental unit for the stated purpose as required by section 51(2)(b) of the *Act*. The Landlord did not argue, nor do I find, that extenuating circumstances existed which prevented the Landlord from using the property for the stated purpose as provided for in section 51(3). Rather I find it likely the

Landlord ended this tenancy so that he could have vacant possession before he offered the property for sale.

A Landlord who intends to sell a rental unit, may end a tenancy, provided that all the conditions set out in section 49(5) exist; for clarity I reproduce those portions:

(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.

A Landlord may not end a tenancy simply because they believe it will be easier to sell the property if the rental unit is vacant; such appears to be the case with respect to the tenancy before me.

As I have found the Landlord did not use the property for the purpose stated on the Notice for a period of at least six months, I find, the Tenants are entitled to compensation pursuant to section 51(2) of the *Act*. I therefore award the Tenants the sum of \$13,200.00 representing 12 months rent at \$1,100.00 per month.

As the Tenants have been substantially successful, they are also entitled to recover the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

The Tenants Application is granted. The Tenants are entitled to the sum of **\$14,400.00** calculated as follows:

Double the security deposit and pet damage deposit less amounts	\$1,100.00.
---	-------------

received from Landlord on September 13, 2019	
$\$550.00 + \$550.00 = \$1,100.00 \times 2 = \$2,200.00$ Less \$1,100.00 returned September 13, 2019	
12 months' rent pursuant to section 51(2) $12 \times \$1,100.00 = \$13,200.00$	\$13,200.00
Filing fee	\$100.00
TOTAL AWARDED	\$14,400.00

In furtherance of this the Tenants are given a formal Monetary Order in the amount of **\$14,400.00**. The Tenants must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) 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: May 20, 2020

Residential Tenancy Branch