# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes **MNDL-S, MNRL-S, FFL (landlords); MNDCT, FFT (tenant)**

Introduction

This hearing dealt with an application by the landlords under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;

- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;

- Authorization to recover the filing fee for this application pursuant to section 72.

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlords attended with their son and translator SL (who joined the hearing 25 minutes after the commencement) ("the landlords"). The tenant attended. The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

The landlords acknowledged receipt of the tenant's documents both with respect to the landlords' application and the tenant's cross-application. I find the tenant served the landlords in compliance with the Act under both applications.

The tenant acknowledged receipt of the landlords' Notice of Hearing with respect to the landlords' application. However, the tenant denied receipt of a copy of the landlords' evidence.

*Preliminary Issue - Service on tenant by the landlords of documentary evidence in both applications*

The landlords acknowledged they sent the evidence in both applications by email the morning of the hearing; they stated they did not understand they were required to serve the tenant earlier.

The *Rules of Procedure* set out how an applicant must serve documents.

Section 2.5 sets out the documents that should be submitted within three days of making the Application; this includes copies of all documentary and digital evidence to be relied upon. The landlords acknowledged they did not comply with section 2.5.

The landlords also acknowledged they did not comply with section 3.1 which required service of documents upon the tenant. The section states:

> ***3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package***

*The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:*
*a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;*
*b) the Respondent Instructions for Dispute Resolution;*
*c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and*
*d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].*

In consideration of the testimony of the parties, I find the landlords have failed to comply with the Rules of Procedure concerning the service of evidence. I will therefore not consider the landlord's evidence in my Decision concerning the landlord's application.

With respect to the tenant's cross application, the landlords acknowledged that they did not serve the tenant with their evidence until the day of the hearing. Accordingly, the landlords' documentary evidence will not be considered in the Decision on the tenant's application.

Issue(s) to be Decided

Are the landlords entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;

- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;

- Authorization to recover the filing fee for this application pursuant to section 72.

Is the tenant is entitled to the following:

- An order for the landlord to return the security deposit pursuant to section 38;

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The parties provided the following testimony. The tenancy began on July 1, 2014 for monthly rent of $2,485.00 payable on the first of the month. The tenant provided a security deposit of $1,125.00 and a pet deposit of $500.00 (together $1,625.00 and referred to as 'the security deposit') which the landlord holds. A copy of the signed agreement was submitted.

The parties agreed the unit was a house which contained an upstairs suite and a downstairs suite. The tenant testified that she rented the entire house; she rented the upstairs suite for the duration of the tenancy to other occupants. At first, her daughter occupied the unit upstairs, and after 3 years, other persons occupied it. The tenant stated that the landlords were aware of this arrangement and "there was no problem", an assertion which was denied by the landlords.

The tenant stated that on December 18, 2019, the landlords served her with a Two Months Notice for Landlord's Use ("Notice"). The Notice stated that the landlords intended to occupy the unit and the tenant had to vacate by February 29, 2020. A copy of the Notice was submitted which is in the standard RTB form.

The reason for the Notice indicated on the form is:

> *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 the individual's spouse).*

The tenant vacated the unit on February 29, 1010 and received one month's rent as compensation by not paying rent for the month of February. The tenant stated that she

was suspicious that the landlords did not intend to move in to the unit and asked neighbours to keep an eye on the building.

The tenant testified that she has been informed by two people who were her neighbours during the tenancy that the landlords never moved in. The tenant submitted letters from the two neighbours containing their observations of the occupancy of the unit.

The letter dated May 13, 2020 from the next-door neighbour (to the unit) GH is essentially the same in key aspects to the letter from the neighbour SR, stating as follows:

> *"March 13th, I noticed a woman moving some plants into the back yard. When I spoke with her, she confirmed that she and her husband were the new tenants and were moving into the Basement Suite.*
> *March 31st, not sure of the dates exactly, but by the end of March, two single guys, and then a couple (man & woman) had moved in up-stairs.*
> *The new tenant confirmed to me that none of the occupants of the house are related to each other, or to the Landlord. The landlord lives with his wife and children, in their family home," …*

The letter dated April 26, 2020 from the neighbour SR stated that SR did not observe either of the landlords spending a night in the unit. She stated that there was an Open House on March 8, 2020. Subsequently, on March 13-15, 2020, a male and female moved in to the downstairs suite. Then, ten days later, on March 26, 2020, two males moved in to the upstairs suite. About four or five days later, another male and female moved in upstairs. The address for SR indicated that she lived across the street from the unit.

The landlords testified that they issued the Notice because they were separating and the female landlord intended to live in the unit. They acknowledged that during March 2020, the downstairs suite was rented to a couple and that two men moved in to the upstairs suite. None of the new occupants are members of the landlords' family.

The female landlord stated she stayed overnight in the upstairs suite on occasion during March and then moved to a separate, detached garage on the property at the end of the month. She testified that she moved there as she was working a lot and did not want to disturb the men, her roommates, in the upstairs suite. She testified she still lives there in the detached garage.

The landlords testified that they received $2,800.00 a month presently from rental of the unit, an increase from the rent paid by the tenant of $2,485.00. However, the landlords denied the tenant's assertion that they wanted her out so they could raise the rent; the extra rent was not the motivation.

The landlord brought an application for a monetary order for damages and compensation on March 3, 2020. The landlords testified that the tenant did not pay rent for the final month of the tenancy, February 2020. As well, they claimed that she damaged the lawn, left garbage at the unit, damaged cabinets in the kitchen, damaged curtains, stained the carpets and left the unit requiring repairs and painting.

The tenant submitted differing testimony along with a copy of the Notice indicating that she received the last month of occupation free as the required compensation under the Act for the issuance of the Notice. The tenant also testified she left the unit in good condition without damage in excess of normal wear and tear. She stated the unit was not painted by the landlord during the years of her tenancy and she is not responsible for the landlord's normal upkeep of the unit. She testified she was an excellent tenant who looked after the building well for the six years she lived there.

The tenant brought her cross-application on May 17, 2020 for a return of her security deposit and for compensation of twelve months rent for the failure of the landlords to occupy the unit.

The tenant claimed that the landlords did not occupy the rental unit for the purpose stated on the Notice within a reasonable time after March 1, 2020. Accordingly, they were seeking twelve months' rent as compensation under the provisions of section 51(2).

The tenant requested the following monetary order:

| ITEM | AMOUNT |
|---|---|
| Security deposit | $1,125.00 |
| Pet deposit | $500.00 |
| 12 months x rent (12 x $2,485.00) | $29,820.00 |
| Reimbursement filing fee | $100.00 |
| **TOTAL CLAIM** | **$31,545.00** |

Analysis

The hearing lasted 81 minutes. While I have turned my mind to all the documentary evidence and the testimony presented, I do not reproduce all details of the submissions and arguments here. I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

I will first deal with the landlords' application for damages.

*Landlords' Application*

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> *7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*
> *. . .*
>
> *67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

I will consider each of the above questions in turn.

*1. Did the tenant fail to comply with Act, regulations, or tenancy agreement?*

*Landlord's Claim for Rent*

Generally speaking, rent must be paid in full and on time.

Section 26(1) states that a tenant must pay rent when it is due under the tenancy agreement, whether the landlord complies with the Act and the agreement, unless the tenant has a right to deduct all or part of the rent.

The section states:

***Rules about payment and non-payment of rent***

> ***26****(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The tenant submitted a copy of the Notice; the landlord acknowledged service of the Notice upon the tenant requiring her to vacate at the end of February 2020. Under the Act, the tenant is entitled to the equivalent of one month's rent in such circumstances. Section 51(1) states:

> ***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.*

I accept the tenant's evidence that she did not pay rent for the final month of the tenancy pursuant to the provisions of section 51(1). I do not find the landlords' claim to be reasonable or supported by the evidence.

I therefore find the landlord has not met the burden of proof that the tenant unlawfully failed to pay rent for the last month of the tenancy. I dismiss this aspect of the landlord's application without leave to reapply.

*Landlords' claim for damages*

Section 37(2) of the Act sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

*37(2) When a tenant vacates a rental unit, the tenant must*

a. *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,…*

The damage must be more than reasonable wear and tear. *Residential Tenancy Policy Guideline #1* explains,

> *"The tenant is…generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site…reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion…an arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear…or neglect by the tenant."*

In this case, the landlord has claimed for compensation due to damages/loss for damages as set out in greater detail above. The tenant denied the landlords' claims.

I have considered the landlord's testimony regarding claims for damages to the unit. As mentioned, the landlords bear the onus of proving their claims. I have as well considered the tenant's testimony which was well supported in all aspects by photographs.

I found the tenant to be a credible, reliable witness and I prefer her version of events to the landlords'. I give greater weight to the tenant's evidence.

I therefore find the landlord has failed to meet the burden of proof with respect to any aspect of the claims for damages; I dismiss the landlords' claims without leave to reapply.

*Tenant's Claims*

The tenant's application involves consideration of the applicable sections of the Act dealing with the termination of tenancy by the landlord for the landlord's use of the property and the landlords' obligation to return the security deposit.

*Landlord's Use*

Section 49 provides in part as follows:

> *49 (2) Subject to section 51 […], 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 not earlier than 2 months after the date the tenant receives the notice…*
>
> *(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.*

After the tenant received the Notice, she complied with the requirement to vacate by February 29, 2020.

Section 51 provides in part as follows (emphasis added):

> *(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.*

The onus is on the tenant to establish their claim under section 51(2) that steps have not been taken, within a reasonable period after March 1, 2020, to accomplish the stated purpose for ending the tenancy, that is, to have the landlords or a close family member of the landlords move in to the unit, or that 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.

*Policy Guideline # 50, Compensation for Ending a Tenancy* provides guidance for determination of issues under section 51(2), stating, in part, as follows [emphasis added]:

> ***Accomplishing the Purpose/Using the Rental Unit***
>
> *Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.*
>
> *This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.*
>
> *A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.*

The female landlord acknowledged that the landlords held an “open house” after the

tenant left so she could find suitable people to live in the house. I accept the tenant's evidence as credible and well supported by documentary evidence including letters from two neighbours, that neither of the landlords moved in to the unit after the tenant vacated. I find that a reasonable conclusion is that the landlords rented both apartments to people unrelated to the landlords.

I do not find the landlords' testimony credible that the female landlord stayed some nights in the upstairs apartment during March 2020 and then moved in to the detached garage in April 2020. I prefer the tenant's version of events to the landlords' and give greater weight to her testimony.

I find the landlords have benefited financially from the tenant vacating the premises, as the landlords acknowledged, as the unit was rented within a month at a substantially increased rent; this further casts doubt in my mind on their assertion that the unit was to be occupied by them, and the increased rent was unanticipated, unplanned and ancillary to the landlords' goal of moving in. Taking into account the parties' evidence, the "open house" to find tenants, the letters from the neighbours and the increased rent from new occupants, I conclude that the landlords' motivation in giving the Notice to the tenant was to get her out and obtain more revenue from the unit.

Considering the evidence submitted by both parties, the *Act* and the Guideline, I find the tenant has presented enough evidence to meet the burden of proof on a balance of probabilities to establish their claim under section 51(2), that is, that the rental unit was not used for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice**.**

I therefore grant the tenant a monetary award under this heading as follows:

| ITEM | AMOUNT |
|---|---|
| 12 months x rent (12 x $2,485.00) | $29,820.00 |
| **TOTAL AWARD** | **$29,820.00** |

*Security deposit*

Section 38 of the Act requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find that the landlords' application to retain the security deposit has been dismissed with leave to reapply.

I accept the tenant's uncontradicted evidence they have not waived their right to obtain a payment pursuant to section 38 of the Act. The landlords have known of the tenant's forwarding address since at least May 17, 2020 when she filed and served her application.

Under these circumstances and in accordance with the Act, I direct the landlord to return the security deposit of $1,625.00 to the tenant and I grant a Monetary Order in this amount.

Pursuant to section 38(6)(b) of the *Act*, I direct that the tenant may apply for a doubling of the security deposit in the event the landlord does not pay this amount within 15 days of the date of this Order.

*Filing fee*

As the tenant has been successful in this application, I award the tenant $100.00 for reimbursement of the filing fee.

*Summary of Award*

I grant the tenant a Monetary Order as follows:

| ITEM | AMOUNT |
|---|---|
| Security deposit | $1,125.00 |
| Pet deposit | $500.00 |
| 12 months x rent (12 x $2,485.00) | $29,820.00 |
| Reimbursement filing fee | $100.00 |
| **TOTAL ORDER** | **$31,545.00** |

Conclusion

I grant the tenant a Monetary Order in the amount of **$31,545.00** as described above.

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: July 03, 2020

Residential Tenancy Branch