



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNSD, MNDCT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on February 26, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the Residential Tenancy Act (the "Act"):

- a monetary order for damage and compensation;
- an order that the Landlord return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenants, the Landlord, and the Landlord's Agents attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. The Tenants stated that they received the Landlord's documentary evidence on September 9, 2020, however, stated that they had sufficient time to consider and respond to the evidence and wished to proceed with the hearing. No other issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

### Preliminary Matters

The parties had a dispute resolution hearing scheduled on July 10, 2020. The Tenants attended the hearing; however, no one appeared for the Landlord. In the decision dated July 15, 2020, the Arbitrator awarded a monetary order to the Tenants. The Landlord applied for a Review Consideration on August 11, 2020 and was granted a new hearing based on the fact that the Landlord was unable to attend the previous hearing. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written

evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit and/or pet damage deposit, pursuant to section 38 of the *Act*?
3. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy started on September 1, 2014. During the tenancy, the Tenants were required to pay rent in the amount of \$900.00 to the Landlord which was due on the first day of each month. The Tenants paid a security deposit in the amount of \$425.00 which the Landlord continues to hold. The tenancy ended on March 8, 2018. The Tenants provided a copy of the tenancy agreement in support.

The Tenants are seeking double the return of their security deposit. The Tenants testified that they provided the Landlord with their 10 day notice to end tenancy early on February 27, 2018 in compliance with a Two Month Notice to End Tenancy for Landlord's Use of the Property dated January 19, 2018 (the "Two Month Notice"). The Tenants testified that they posted the 10 day notice to the Landlord's door on February 27, 2018 which also contained the Tenants' forwarding address. The Tenants provided a copy of the 10 day notice, pictures of the 10 day notice posted on the Landlord's door, and a witnessed proof of service in support.

The Landlord's Agents responded by stating that they were unsure as to when the Landlord received the Tenants' 10 day notice. The Landlord's Agents stated that the Landlord has not yet returned the Tenants' security deposit, nor has the Landlord applied to retain it.

The Tenants are seeking two months compensation in relation to the Landlord not following through on the intended purpose of the Two Month Notice which the Tenants

received on January 19, 2018 with an effective vacancy date of April 1, 2018. The Tenants provided a copy of the Two Month Notice which indicates;

*“The Landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant”*

The Tenants stated that the Landlord did not complete extensive renovations and that the Landlord listed the rental unit for sale on April 25, 2018. The Tenants provided a copy of the listing in support. Furthermore, the Tenants stated that the Landlord also listed the rental unit for rent at a higher rent in the amount of \$1,400.00 which was available June 1, 2018. The Tenants provided a copy of the rental advertisement in support.

The Tenants are seeking compensation equivalent to one month of rent in accordance with the Two Month Notice which they received. The Tenants stated that the Landlord did not compensate them one month of rent which is a requirement of the Two Month Notice.

The Landlord's Agents responded by stating that the Landlord did not serve a Two Month Notice to the Tenants and that the Two Month Notice submitted by the Tenants is fraudulent. The Landlord's Agents stated that the parties mutually agreed to end the tenancy, however, the Landlord did not provide evidence in support. The Landlord provided several receipts for renovation work that was completed after the tenancy ended. These receipts consist of work related to renovating the back-deck vinyl, repairing the ceiling drywall, and for painting. The Landlord also provided a picture of the renovated deck in support. The Landlord's Agents stated that there was also work completed to structural joist, however did not provide evidence in support

The Tenants are seeking 50 percent of the rent for 6 months in the amount of \$2,700.00 for loss of quiet enjoyment. The Tenants stated that the Landlord was restrictive with the use of heat and fans throughout the tenancy in an effort to reduce utility costs. The Tenants stated that the Landlord was aggressive and threatening during their communications. The Tenants stated that the Landlord had permitted the Tenant's parents to reside with them for extended visits during the tenancy at an additional charge. The Tenants stated that the Landlord eventually revoked this permission, resulting in the Tenant's parents to reschedule their flight when they had intended on visiting the Tenants.

The Tenants are seeking \$1,000.00 compensation in relation to discrimination and intimidation after the end of the tenancy. If successful, the Tenants are also seeking the return of the filing fee paid to make the Application.

### Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

In relation to the Tenants claim for the return of double their security deposit, Section 38(1) of the Act requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the Act, and does not have authority under sections 38(3) or 38(4) of the Act to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit.

In this case, the parties agreed that the Tenants vacated the rental unit on March 8, 2018. I find that the Tenants have provided sufficient evidence to demonstrate that they posted their forwarding address to the Landlord's door on February 27, 2018. As there is no evidence before me that the Landlord was entitled to retain all or a portion of the security deposit under sections 38(3) or 38(4) of the Act, I find pursuant to section 38(1) of the Act, that the Landlord had until March 23, 2018 to repay the deposit or make an application for dispute resolution. The Landlord's Agents stated that the Landlord did neither.

In light of the above, and pursuant to section 38(6) of the Act, I find the Tenants are entitled to an award of double the amount of the security deposit paid to the Landlord (\$425.00 x 2 = **\$850.00**).

The Tenants have claimed for compensation equivalent to one month of rent after being served the Two Month Notice pursuant to Section 51 of the Act. The Landlord's Agents stated that the Landlord did not serve the Tenants with a Two Month Notice. After reviewing the Two Month Notice to End Tenancy submitted by the Tenants, I find that the Landlord's signature on the Two Month Notice resembles the Landlord's signature on the tenancy agreement. I find on a balance of probabilities that it is more likely than not that the Landlord served the Two Month Notice to End Tenancy to the Tenants.

As such, I am satisfied that the Landlord did not compensate the Tenants in this amount required by law. As a result, I grant the Tenants a monetary award in the amount of **\$900.00** which is equivalent to one month of rent.

The Tenants are claiming for compensation equivalent to Two Month rent as the Landlord did not follow through on the intended purpose of the Two Month Notice. Section 51 of the Act prior to May 17, 2018 states;

Section 51(2) **Before May 17, 2018** states; 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.

In this case, I find that the Landlord has provided insufficient evidence to demonstrate that they had all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant. I accept that Tenants' evidence that the Landlord listed the rental unit for sale on April 25, 2018. I also accept that the Landlord listed the rental unit for rent at a higher rent in the amount of \$1,400.00 which was available June 1, 2018.

In light of the above, I find that the Landlord provided insufficient evidence to demonstrate that they took steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice. Therefore, I find that the Tenants are entitled to double the monthly rent payable under the tenancy agreement ( $\$900.00 \times 2 = \mathbf{\$1,800.00}$ ).

In relation to the Tenants claim for loss of quiet enjoyment, discrimination and intimidation, Section 67 of the Act empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the

Act. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

PG #6, "Entitlement to Quiet Enjoyment" establishes:

## **B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In this case, I find that the Tenants have provided insufficient evidence to demonstrate that the Landlord has caused substantial interference with the lawful enjoyment of the premises. I find that the Tenants have provided insufficient evidence to demonstrate that they mitigated their loss by notifying the Landlord of the impact that their actions had on them. Furthermore, I find that the Tenants had to opportunity to submit an Application for Dispute Resolution during the tenancy should they felt as though the Landlord was not complying with the *Act*.

As such, I dismiss the Tenants' claim for compensation relating to loss of quiet enjoyment, discrimination, and intimidation without leave to reapply.

Having been partially successful, I find the Tenants are entitled to recover the **\$100.00** filing fee paid to make the Application.

Pursuant to section 67 of the Act, I find the Tenants are entitled to an amended monetary order in the amount of **\$3,650.00**, which has been calculated as follows:

<b>Claim</b>	<b>Award</b>
Doubled Security Deposit:	\$850.00
One Month Rent Compensation:	\$900.00
Two Month Rent Compensation:	\$1,800.00
Filing fee	\$100.00
<b>TOTAL:</b>	<b>\$3,650.00</b>

### Conclusion

The Tenants are granted an amended monetary order in the amount of **\$3,650.00**. The order should be served to the Landlord as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

I believe that this decision has been rendered in compliance with the timelines set forth in section 77(1)(d) of the *Act* and section 25 of the *Interpretation Act*. In the event that this is not the case, I note that section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

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: October 21, 2020

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Residential Tenancy Branch