



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, MNDCT, MNSD, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on January 9, 2021 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary for compensation related to a Notice to End Tenancy for Landlord's Use of the Property;
- a monetary order for damage, compensation, or loss;
- an order that the Landlord return all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Landlords and the Tenants attended the original hearing on May 13, 2021, which was adjourned to allow the parties to be adequately served with each other's documentary evidence packages. Both parties attended the Reconvened Hearing on September 13, 2021 and confirmed service and receipt of their respective Application and documentary evidence packages. Pursuant to Section 71 of the Act, I find the above-mentioned documents were sufficiently served.

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.

### Issues to be Decided

1. Are the Tenants entitled to a monetary order relating to compensation, pursuant to Section 51 and 67 of the *Act*?

2. Are the Tenants entitled to an order that the Landlords return all or part of the security 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 that the tenancy began on October 1, 2018. At the start of the tenancy, the Tenants were required to pay rent in the amount of \$1,650.00 which was due on the first day of each month. The parties agreed by the end of the tenancy, the Tenants paid \$1,750.00. The parties agreed that the Tenants paid a security deposit in the amount of \$1,000.00 which the Landlords continue to hold. The Tenants stated that the tenancy ended on October 20, 2020, while the Landlords stated the Tenants moved out on October 23, 2020.

The Tenants are claiming \$21,000.00 for compensation related to a Notice to End Tenancy for Landlord's Use of the Property. During the hearing, the parties testified and agreed that the Landlords did not serve the Tenants with a Two Month Notice for Landlord's Use. Instead, the Tenants stated that the Landlords indicated verbally and by email, that they intended to occupy the rental unit. The Tenants are claiming that the Landlord re-rented the rental unit after they vacated.

The Tenants are also claiming for the return of their security deposit. The parties agreed that the Tenants paid a security deposit to the Landlords in the amount of \$1,000.00. The Tenants stated that that the Landlords have not yet returned their deposit. The Landlords stated that they feel entitled to retaining the Tenants' security deposit towards unpaid rent. The Tenants stated that they have not yet provided the Landlords with their forwarding address in writing, but that it had been included on the envelope which contained the Notice of Hearing.

Lastly, the Tenants are claiming for compensation relating to an improper rent increase which was applied by the Landlords during the tenancy. The Tenants stated that they were required to pay rent in the amount of \$1,650.00 at the start of the tenancy. A tenancy agreement was provided in support. The Tenants stated that the Landlords raised the rent to \$1,750.00 starting on November 2019. The Tenants stated that the Landlords did not serve a notice of rent increase. Furthermore, the Tenants stated that the Landlords were not permitted to raise the rent above the allowable amount. As such, the Tenants are seeking compensation for the overpayment of rent from November 2019 to September 2020 (11 months).

The Landlords stated that the parties had verbally agreed at the start of the tenancy that the rent would increase by \$100.00 after one year. The Landlord stated that he did not provide any documentary evidence to support this claim.

If successful, the Tenants are also seeking the return of the filing fee.

### 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:

With respect to the Tenants' claim for compensation related to a Notice to End Tenancy for Landlord's Use of the Property;

According to Section 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.

I accept that the parties agreed that the Landlords did not serve the Tenants with a Notice to End Tenancy under Section 49 (Landlord's Use of Property), therefore, I find that the Tenants are not entitled to compensation pursuant to Section 51 of the *Act*. I therefore dismiss this claim without leave to reapply.

The Tenants have also claimed for the return of 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. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

Section 88 of the *Act* allows for documents, other than those referred to in section 89, that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

I accept that the Tenants served the Landlord with the Notice of Hearing for this Dispute Resolution Proceeding, which contained their forwarding address.

According to the Residential Tenancy Branch Practice Directive (the "Practice Directive"); A forwarding address provided by the Tenant on the Application for Dispute Resolution form does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address. Additionally Landlords who receive the forwarding address in the Application may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the Deposits.

In light of the above, I find that the Tenants did not adequately serve the Landlords with their forwarding address in writing in accordance with Section 38(1) of the *Act*. Therefore, I dismiss the Tenants' claim for the return of their security deposit with leave to reapply. The Tenants are required to provide the Landlords with their forwarding address in writing. It is suggested that this be done by Canada Post registered mail.

Section 39 of the *Act* establishes that it is the Tenants' obligation to provide a forwarding address for return of the Deposits within a year of the end of the tenancy. If that does not occur, the Landlords may keep the deposit and the Tenant's right to the deposit is extinguished.

In relation to the Tenants' claim for compensation for an improper rent increase;

Section 42 of the *Act* outlines the allowable timing and notice of rent increases;

A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
  - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this *Act*.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.**

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Section 43 of the *Act* outlined the allowable amount of rent increase;

A landlord may impose a rent increase only up to the amount that is calculated in accordance with the Regulations, ordered by the Director, **or agreed to by the tenant in writing.**

The Residential Tenancy Policy Guideline 37 offers further clarity around Rent Increases;

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.

The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.

**Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.**

In this case, I find that the Landlords provided insufficient evidence to demonstrate that the parties agreed to the rent increase in writing, that they serve a notice of rent increase in the approved form, nor did they demonstrate that the rent increase was within the allowable amount. As such, I find that the Landlords were not permitted to increase the rent from \$1,650.00 to \$1,750.00. I find that the Tenants are entitled to a reimbursement for the \$100.00 overpayment of rent from November 2019 to September 2020 in the amount of ( $\$100.00 \times 11 \text{ months} = \mathbf{\$1,100.00}$ ).

Having been partially successful, I also 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 a monetary order in the amount of **\$1,200.00**.

Conclusion

The Landlords breached Section 42 and 43 of the *Act*. The Tenants are granted a monetary order in the amount of \$1,200.00. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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 14, 2021

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Residential Tenancy Branch