



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDB-DR, MNDCT

### Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenant seeking a monetary order for return of all or part of the pet damage deposit or security deposit and for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement. The application was made by way of the Direct Request process which was referred to this participatory hearing and an Interim Decision was provided to the tenant.

The tenant and the first named landlord (BV) attended the hearing and the tenant was accompanied by an Advocate. The tenant and the landlord each gave affirmed testimony and the parties were given the opportunity to question each other.

During the course of the hearing, I determined that the landlord had not provided any evidentiary material to the tenant, stating that it is none of the tenant's damn business. Any evidence that a party wishes me to consider must be served to the other party. Since the landlord has not done so, I decline to consider any of the landlord's evidentiary material. The tenant's Advocate submitted that the landlords have both been served with the tenant's evidence on June 7, 2021 by registered mail, which is when both landlords were served. All evidence of the tenant has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit and pet damage deposit?

- Has the tenant established a monetary claim as against the landlords, or either of them for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for compensation for the landlords' failure to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property and reimbursement for hydro bills?

### Background and Evidence

**The tenant** testified that this month-to-month tenancy began on May 15, 2019 and ended on January 15, 2021. Rent in the amount of \$600.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. On May 15, 2019 the landlord collected a security deposit from the tenant in the amount of \$300.00 as well as a pet damage deposit in the amount of \$100.00, both of which are still held in trust by the landlord. The rental unit is a condominium apartment, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property and a portion has been provided for this hearing. It is dated November 26, 2020 and contains an effective date of vacancy of January 31, 2021. The tenant received 1 page and then the other pages later. Pages 1 and 2 of the 4-page form have been provided for this hearing. It states 2 reasons for ending the tenancy:

- 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 individual's spouse), indicating the landlord or the landlord's spouse; and
- All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The purchaser is the second landlord named in this dispute (WFF), who asked the tenant to move out earlier than the effective date of the notice to end the tenancy and the tenant complied. However the rental unit did not sell. The tenant's Advocate made a land title search and the rental unit is still in the name of the landlord (BV).

On January 15, 2021 the tenant gave the landlord a forwarding address to the on-site manager with the keys at move-out. A copy of the letter containing a forwarding

address of the tenant has been provided for this hearing, marked "Hand Delivered." The landlord has not returned any of the deposits to the tenant.

The tenant has provided a Monetary Order Worksheet setting out the following claims, totaling \$8,163.58:

- \$600.00 for double return of the security deposit;
- \$200.00 for double return of the pet damage deposit;
- \$163.58 for reimbursement of the hydro bill; and
- \$7,200.00 compensation for the landlord's failure to use the rental unit for the purpose contained in the Two Month Notice to End Tenancy for Landlord's Use of Property.

There were previous dispute resolution hearings by the Residential Tenancy Branch and the tenant won a judgment; copies of the resulting Decisions have not been provided for this hearing; the tenant testified that the landlords did not attend one of the hearings.

**The landlord** testified that he did sell the rental unit but hasn't been paid yet so the property is still in the landlord's name. It's called a Vendor Take-Back Mortgage and the purchaser is still making payments while the landlord (the seller) is carrying the mortgage. The purchaser and family currently reside in the rental unit.

It was the purchaser who gave the notice to end the tenancy to the tenant.

The landlord did not return the security deposit or pet damage deposit to the tenant due to dog urine on walls, in carpets and ingrained into the floors. The landlord had to make numerous repairs over \$5,000.00, but did not know he had to make an application for dispute resolution to keep the deposits.

At a previous hearing the Arbitrator told the tenant to stop harassing the landlord and to stop using the Residential Tenancy Branch as a method to get money from the landlord.

During his testimony the landlord became extremely agitated, threatening to sue me and the Residential Tenancy Branch. I invited the landlord to hang up the phone, and he complied.

### Analysis

The landlord does not reside in the Province of British Columbia, but where a person carries on business as a landlord in the Province of British Columbia, the landlord must comply with the Residential Tenancy laws of the Province of British Columbia.

A landlord must return a security deposit and/or pet damage deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount to the tenant.

In this case, I am satisfied in the evidence that the landlord received the tenant's forwarding address in writing in a letter given to the landlord's agent on January 15, 2021, and I accept the undisputed testimony of the tenant that the tenancy ended the same day. The landlord has not returned either of the deposits and has not applied for dispute resolution claiming against them. Therefore, I find that the tenant has established a claim for double the \$300.00 security deposit and double the \$100.00 pet damage deposit, for a total of \$800.00.

With respect to the tenant's claim for compensation equivalent to 12 months rent for the landlord's failure to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord testified that the rental unit has sold but the landlord is carrying the mortgage so the land title documents still show that the rental home is in the landlord's name. I accept that. Although a landlord may not issue a Two Month Notice to End Tenancy for Landlord's Use of Property until all of the conditions for the sale have been satisfied, and that if the tenant had disputed the Notice, given that 2 reasons are given for ending the tenancy, that has all passed and the tenant moved out. I am not satisfied that the tenant has established that the purchaser has not used the rental unit or that the seller has not sold the rental unit, and I dismiss that portion of the tenant's application.

Having dismissed that portion of the application, and having found that the landlord (BV) had unlawfully kept the security deposit and pet damage deposit, I must also dismiss the tenant's application in its entirety as against the landlord (WFF).

The tenant has provided a copy of a hydro bill and payment history, but did not lead any evidence with respect to the claim for reimbursement of hydro, and has not provided

evidence of having paid any amount, and I dismiss that portion of the tenant's application.

I have also conducted a search of historic records and have not located a Decision wherein an Arbitrator told the tenant to stop filing claims against the landlord(s).

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord (BV) pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$800.00.

The tenant's application as against the second named landlord (WFF) is hereby dismissed in its entirety without leave to reapply.

This order is final and binding and may be enforced.

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 15, 2021

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Residential Tenancy Branch