



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT MNDCT MNSD RPP FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for a monetary order in the amount of \$35,000.00, comprised of \$32,420.12 for 12 months' compensation due to the landlords failing to comply with the reason stated on the 2 Month Notice to End Tenancy for Landlord's Use of Property dated October 3, 2018 (2 Month Notice), for \$1,650.00 for double the return of the security deposit, for \$829.88 for the return of personal property and emergency repairs, \$500.00 for moving expenses, and \$12,120.12 for family losses, pain and suffering related to eviction, and \$100.00 to recover the filing fee.

The tenant, landlord SK (landlord) and a support person for the landlord, RN (support) attended the teleconference hearing. All participants were affirmed, the hearing process was explained, and the parties were given an opportunity to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

The hearing began on May 11, 2021, and after 57 minutes, was adjourned until September 13, 2021. On the latter date, and after 63 additional minutes, the matter was adjourned again until January 10, 2022, when after an additional 93 minutes, the hearing concluded. Two Interim Decisions dated May 11, 2021 and September 13, 2021 were issued, which should be read in conjunction with this decision.

I have reviewed all oral, documentary and digital evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this

decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service of documentary evidence. Based on the above, I find the parties were sufficiently served according to the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

During the hearing, the tenant was advised that their \$829.88 portion relating to the cost of emergency repairs was being dismissed without leave to reapply as I find the tenant failed to comply with section 59(2)(b) of the Act and RTB Rule 2.5. Section 59(2)(b) of the Act applies and states:

Starting proceedings

59(2) An application for dispute resolution must

(a) be in the applicable approved form,

(b) **include full particulars of the dispute that is to be the subject of the dispute resolution proceedings,**

[emphasis added]

RTB Rule 2.5 applies and requires that copies of all other documentary and digital evidence to be relied on in the proceeding at the same time the application was submitted. The tenant stated that there were several reasons why they did not file their evidence sooner, of which one reason was procrastination. I find that procrastination is not a sufficient reason to fail to comply with RTB Rule 2.5. In the matter before me, the tenant filed their application on December 31, 2020 and did not provide the evidence

related to the \$829.88 portion of the claim until amending the claim on the last possible date on April 26, 2021, which was 15 days before the hearing commenced on May 11, 2021. I exercise my discretion not to consider the \$829.88 portion of this claim as that portion would result in the tenant having the onus of proof, while the other portions of their claim, the landlord has the onus of proof. Therefore, I find the tenant should have filed their evidence in December 2020 and not on April 26, 2021.

In addition, and for the same reasons stated above, I dismiss the tenant's claim for \$500.00 for moving expenses, and \$12,120.12 for family losses, pain and suffering related to eviction as the tenant did not dispute the 2 Month Notice, which I will address later in this decision, and as a result, I find the tenant is not entitled to either remedy under the Act. Furthermore, I find the evidence to support these portions of the tenant's claim were filed 15 days before the hearing commenced on May 11, 2021, which is contrary to RTB Rule 2.5 and section 59(2)(b) of the Act.

As a result of the above, I find the only matters for me to determine are the \$1,650.00 claim for double the security deposit, \$19,800.00 for compensation for 12 times the monthly rent related to the 2 Month Notice reason allegedly not being complied with, and the filing fee. Therefore, I amend the monetary claim pursuant to section 64(3)(c) of the Act to \$21,550.00. **Any amount over the amount of \$21,550.00 is dismissed without leave to reapply pursuant to section 59(2)(b) of the Act and RTB Rule 2.5.**

Issues to be Decided

- What should happen to the tenant's security deposit under the Act?
- Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- If yes, are the tenants also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of two tenancy agreements were submitted in evidence. The first tenancy began on September 1, 2013 for a period of 24 months, with an option to renew for an additional 12 months. The second fixed-term tenancy began on September 1, 2016 for a period of 24 months and ended when the tenant returned the rental unit keys on

January 3, 2019. Monthly rent was always \$1,650.00 and was due on the first day of each month. The tenant paid a security deposit of \$825.00 at the start of the first tenancy, which the landlord continues to hold.

The tenant stated that they vacated the rental unit on December 31, 2018 and returned the rental unit keys on January 3, 2019. The landlord agreed that the tenant returned the keys on the date specified.

Security deposit

The tenant testified that they provided their written forwarding address to the landlord on December 6, 2018. A copy of the written forwarding address (Letter) was submitted in evidence. The landlord confirmed that they received the Letter but could not recall the date when they received the Letter.

The landlord testified that the rental unit keys were returned by the tenant on January 3, 2019. The landlord confirmed that they did not have written permission from the tenant to retain any portion of the security deposit and have not returned any amount of the tenant's security deposit to the tenant.

The tenant is seeking double the return of the \$825.00 security deposit as the tenant claims the landlord has breached the Act. The landlord has not filed a claim against the tenant's security deposit.

2 Month Notice

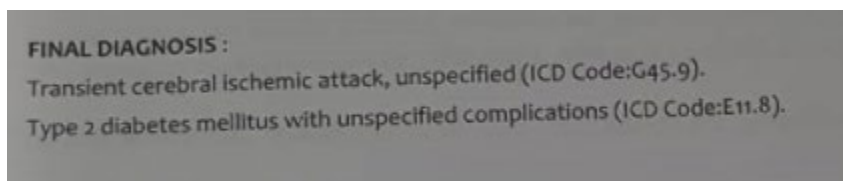
There is no dispute that the tenant was served with the 2 Month Notice and that the tenant did not file an application to dispute the 2 Month Notice. The effective vacancy date listed on the 2 Month Notice was December 31, 2018. The reason stated on the 2 Month Notice states:

Reason for this Two Month Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	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).

Although the landlord stated that the family-owned business was the landlord, I disagree with the landlord and the parties were advised of this during the hearing, as both the tenancy agreement and the 2 Month Notice did not list a family-owned business. Therefore, I find the issue of a family-owned business to be moot in this matter.

Therefore, the only matter related to the 2 Month Notice that I must decide is whether or not the landlord complied with the reason stated on the 2 Month Notice.

The landlord testified that her parents were planning to move into the rental unit from Dubai but in January 2019, the landlord's father had a medical issue. The landlord also testified that her father found out that an employee was stealing from his company and that her dad was 70 years old at the time he found out about the theft from his company. The landlord referred to a discharge summary which states a date of arrival of February 28, 2019 and date of discharge as March 1, 2019 (Discharge Summary) and states the final diagnosis as:



The landlord also states that her mother lives in Surrey and that her parents were only in Dubai temporarily and maintained their primary residence in Surrey. The landlord stated that plans changed for her mother due to the landlord's father remaining in Dubai and as a result, the landlord's brother decided to move into the rental unit.

The landlord stated that eventually plans changed again and that the decision was made to re-rent the rental property and that renovations began in January 2019. The landlord testified that the rental unit was re-rented for "north of \$3,000.00 per month".

The tenant referred to a Craigslist advertisement (ad) of \$2,900.00 dated January 29, 2019 offering the rental unit for rent. The tenant testified that all the photos were as the rental unit was left and did not support that any renovations took place. The landlord replied that they would not use mid-renovation photos for the ad so the photos were taken from when the tenancy ended and that the landlord was not aware that their brother posted the January 29, 2019 rental ad until later. The landlord stated that their brother posted the ad as a "gut reaction to test the market" before the upgrades were done to the rental unit. The tenant stated that they dispute that any upgrades/renovations were made to the rental unit due to no photo evidence being submitted to support the landlord's statement.

The tenant also referred to a March 26, 2019 ad where the rental unit was advertised for \$3,500.00 per month. The tenant stated that prior to vacating the rental unit, they asked the landlord if their parents had purchased plane tickets to travel to BC and the landlord

confirmed during the hearing that their parents did not purchase plane tickets when asked. The landlord stated that they would not purchase tickets until it was time to travel as they did not have a lot of personal items in Dubai and would not have paid to ship any personal items back to BC.

The tenant then raised the issue of an October 16, 2018 reference letter (Reference Letter) signed by the landlord. In that letter it reads in part as follows:

To Whom it may Concern:

Re: [redacted] Rental Reference

This reference letter is to confirm that [redacted] along with their pets, resided in our rental property at [redacted] Surrey, BC from September 1, 2013 to present.

(The tenants have a move-out date of December 31, 2018, and are moving due to me serving, on October 3, 2018, A "Two Month Notice to End Tenancy for Landlord's Use of Property" as my parents are moving back from Dubai and need to move into the home prior to February, 2019.)

We have not had any problems with them, and the lease payments were made before, or on time, and never late, and have not had any problems with them.

Please consider their application for a rental as they are good tenants. Feel free to give me a call if you require further information.

Thank you.

Regards,

[redacted signature box]

[personal information redacted to protect privacy]

The landlord testified that they were busy in Montreal at the time the tenant asked them for the Reference Letter and as a result, the landlord asked the tenant to write the Reference Letter and they would sign it. The landlord stated that they made a mistake by not changing any of the details in the Reference Letter before signing it and returning it to the tenant.

The landlord testified on January 10, 2022 that her father is still winding down his business in Dubai and has not returned to BC yet due to Covid. The landlord writes in their documentary evidence in part that once their brother knew that their parents would not be staying (in reference to their mother), their brother did not see a reason for their

other brother, V (Other Brother) to move into the rental unit and decided the house needed to be re-rented to cover mortgage payments. While the landlord provided several documents related to her Other Brother, the address on those documents does not match the rental unit address.

The landlord testified that her mother had come to BC for 4 months and then returned to Dubai to take care of her husband (father of landlord). The landlord testified that renovations to the rental unit were completed on April 25, 2019 and that the rental unit was rented as of June 1, 2019 for \$3,500.00 per month. The landlord stated that due to rent never being increased during the tenancy, the market rent had increased by June 2019. The tenant replied by stating that the landlord evicted the tenant to get a higher rent from new tenants.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

Security deposit – Having considered that the written forwarding address dated December 6, 2018 was received by the landlord and using January 3, 2019 as the end of tenancy date as that was the date provided by the landlord as the return of the keys date, I find the landlord had 15 days from January 3, 2019 to return the tenant's full security deposit of \$825.00 or file a claim towards the security deposit. Sections 38(1) and 38(6) of the Act apply and state:

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.

(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.**

[emphasis added]

Based on the above, I find the landlords breached section 38(1) of the Act by failing to return the security deposit in full to the tenant within 15 days of January 3, 2019, which is date being used due to the return of the rental unit keys coming after the date the landlord received the tenant's written forwarding address. Having considered that the landlord also failed to make a claim against the tenant's security deposit within 15 days of January 3, 2019 and has not filed a claim against the deposit at all, I find the tenant is entitled to the return of double the original security deposit of \$825.00 for a total of **\$1,650.00**. I note that the tenant's security deposit accrued \$0.00 in interest since the start of the tenancy. The tenant has met the burden of proof as a result.

12 times the monthly rent - Section 51(2) of the Act applies and states:

Tenant's compensation: section 49 notice

51 (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.**

[emphasis added]

The landlord is attempting to rely on section 51(3) of the Act which states:

(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.**

[emphasis added]

Based on the evidence before me, I find the landlords have provided insufficient evidence of extenuating circumstances as I find that the Discharge Summary, theft from their father's business in Dubai, and Covid are not sufficient reasons to re-rent the rental unit and fail to use it as indicated on the 2 Month Notice. Furthermore, I find there is insufficient evidence that the rental unit required the renovations described and that renovations were not listed as the reason to end the tenancy.

On the balance of probabilities, I find it more likely than not that the tenant was evicted due to the low rent of \$1,650.00 and that the landlords are now receiving \$3,500.00 per month, which I consider to be unjust enrichment. Therefore, given the evidence before me, I find that the landlords have failed to meet the burden of proof to support extenuating circumstances that prevented them from using the rental unit for at least 6 months from December 31, 2018, which was the effective vacancy date listed on the 2 Month Notice. Therefore, I find the tenant has met the burden of proof and are entitled to **\$19,800.00** in compensation from the landlord, comprised of 12 times the monthly rent of \$1,650.00 pursuant to section 51(2) of the Act.

As the tenant's application had merit, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

I find the tenant has established a total monetary claim of **\$21,550.00** comprised of \$1,650.00 for double the security deposit, plus \$19,800.00 for 12 times the \$1,650.00 monthly rent, plus the \$100.00 filing fee.

Conclusion

The tenant's application is partially successful.

The security deposit as been doubled as indicated above. In addition, I find the landlord failed to use the rental unit for the stated purpose and instead, has re-rented the rental unit for over double the amount of the monthly rent the tenant was paying when served the 2 Month Notice in 2018. I find the landlord has failed to prove extenuating

circumstances that prevented them from complying with the reason listed on the 2 Month Notice.

The tenants are granted a monetary order pursuant to section 67 of the Act, in the amount of \$21,550.00 as indicated above. The monetary order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlord is reminded that they can be held liable for all enforcement costs under the Act.

This decision will be emailed to both parties.

The monetary order will be emailed to the tenant only for service on the landlords.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 2, 2022

Residential Tenancy Branch