



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, FFT, MNETC**

Introduction

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

The tenant attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line for 28 minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

Service upon the Landlord

The tenant provided affirmed testimony that they sent the Application for Dispute Resolution and Notice of Hearing to the landlord by registered mail to the landlord's address where he lived and carried on his business on October 21, 2021. The tenant submitted the receipt from Canada Post and the tracking number.

Further to the tenant's testimony and documents, I find the tenant served the landlord in compliance with the Act.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The tenant provided uncontradicted evidence as the landlord did not attend the hearing.

Background

The tenant rented a single-family residence ("the unit") from the landlord. The background of the monthly tenancy is:

ITEM	
Date of Beginning	November 1, 2017
Type of Tenancy	monthly
Monthly rent	\$1,895.00
Security deposit	\$600.00
Pet deposit	\$600.00
Returned deposit	\$600.00
Balance of security deposit	\$600.00
Date of Move Out	August 7, 2020
Forwarding Address provided	July 22, 2021, by RTB Notice and by letter (copy submitted) delivered personally

As stated, the tenant provided a pet and security deposit (together “the security deposit”) of a total of \$1,200.00.

After they moved out, the landlord informed the tenant that the tenant was responsible for dump fees for furniture although he previously told the tenant to leave unwanted items. He said he would not be returning all the security deposit.

The landlord returned one-half of the security deposit to the tenant leaving a balance owing of \$600.00. The landlord holds the security deposit without the consent of the tenant.

The tenant provided their forwarding address to the landlord by delivering the RTB form and accompanying signed letter to him personally on July 22, 2021. Service took place at the landlord’s home where he conducted his business. The tenant submitted a copy of the RTB form and the signed letter.

Four Month Notice

The landlord served the tenant with a 4 Month Notice as follows:

INFORMATION	DETAILS
Type of Notice	4 Month Notice, copy submitted
Date of Notice	April 1, 2020
Effective Date of Notice	August 7, 2020
Date and Method of Service	Served by property manager personally
Effective Date of Service	April 1, 2020
Reasons for Issuance	Demolish the Unit

The tenant did not dispute the Notice and moved out on August 7, 2020.

The tenant received one month’s rent as compensation.

Condition Inspection Reports

The tenant testified there was no condition inspection on moving out. The landlord told the tenant no inspection was necessary as the unit was being torn down.

No condition inspection reports were submitted.

Security deposit

The tenant has not agreed that the landlord may keep any part of the security deposit.

The tenant repeatedly requested that the landlord return the balance of the security deposit of \$600.00 to no avail.

The tenant testified that the landlord has not filed an application to retain the security deposit.

The tenant provided their forwarding address in writing to the landlord on July 22, 2021.

Occupation of the Unit

The tenant testified that he gets his hearing aids serviced in the municipality where the unit is located. From time to time he drove by the unit, as recently as a month before the hearing. It has never been torn down.

In October 2020, 3 months after moving out, the tenant drove by the unit. They saw there were two cars in the driveway, and it had been re-paved. He knocked on the door and a man answered who said he was the tenant. The occupant said he hoped to buy the house.

The tenant submitted pictures of the unit taken at that time.

The tenant believed the landlord evicted them, not so the landlord could demolish the house, but so it could be sold or rented again at a greater rent.

Summary

In summary, the tenant requested 12 months rent as compensation as the landlord did not carry out the purpose stated in the Notice, the return of double the security deposit and reimbursement of the filing fee.

Analysis

Compensation

Section 49 of the Act provides circumstances where a landlord can end a tenancy for landlord's use of property.

Section 49 (3) of the Act provides that 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.

Section 51 (2) of the Act provides:

(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

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(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.

(Underlining added)

(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.

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of property.

I accept the tenant's credible, consistent and reliable evidence in all aspects. Based on all the above, the evidence and testimony from the tenant, and on a balance of probabilities, I find as follows.

I find the tenant was served by the landlord with the 4 Month Notice in the standard RTB form as described. The Notice stated the purpose of the Notice was the landlord intended to demolish the unit. The tenant accepted the Notice and the tenancy ended in four months after service, on August 7, 2020.

I accept the tenant's testimony that they returned to the unit In October 2020, saw the driveway had been repaved and spoke to the occupant who identified themselves as the current tenant. I accept the testimony the house has never been demolished. I find the landlord did not demolish the unit.

I find the tenant has met the burden of proof on a balance of probabilities that the landlord failed to comply with section 51(3) and did not use the rental property for the reason stated in the Notice. I find 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. I find the rental unit was not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. I find the landlord never demolished the unit and did not comply with section 51 of the Act.

The tenant requested a Monetary Order in the amount of 12 times the monthly rent.

Pursuant to section 51(2) of the Act, the landlord must pay the tenant the equivalent of 12 times the monthly rent of \$1,895.00 payable under the tenancy agreement which I find is $\$1,895.00 \times 12 = \$22,740.00$.

I grant an award to the tenant under this heading of \$22,740.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the tenant was successful with their application, I order the landlord to repay the \$100.00 fee that the tenant paid to make application for dispute resolution.

In summary, I grant the tenant a monetary award of **\$22,840.00** calculated as follows:

ITEM	AMOUNT
12 times monthly rent	\$22,740.00
Reimbursement filing fee	\$100.00
TOTAL	\$22,840.00

Security deposit

I accept the tenant's credible testimony in all aspects and find as follows.

The landlord conducted no condition inspection on moving out. He informed the tenant there was no need for an inspection as he planned to demolish the unit.

The landlord partially returned the security deposit, leaving a balance owing of \$600.00. He refused to return the balance.

The tenant did not agree that the landlord withhold any of the security deposit. The landlord has not brought an application against the tenant.

On July 21, 2021, the tenant provided the landlord their forwarding address in writing and as required under the Act.

The tenant requested return of double the security deposit for the landlord's failure to return the security deposit within 15 days of the provision of the forwarding address.

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 at no time has the landlord brought an application for dispute resolution claiming against the security deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act*. I find the landlord received the tenant's address as testified.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenant is entitled to a monetary order of **doubling of the security deposit**. The landlord is credited with the amount returned.

Award

I grant the tenant a Monetary Order of **\$24,640.00** calculated as follows

ITEM	AMOUNT
12 times monthly rent	\$22,740.00
Reimbursement filing fee	\$100.00
Security deposit	\$1,200.00
Doubling of security deposit	\$1,200.00
(Less partial return of security deposit)	(\$600.00)
TOTAL MONETARY ORDER	\$24,640.00

Conclusion

I grant the tenant a Monetary Order in the amount of **\$24,640.00** as described above.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file and enforce the order in the Courts of the Province of BC.

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: May 26, 2022

Residential Tenancy Branch