



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, MNDC, FFT**

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 for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- A monetary order in the amount of one month's rent as compensation under section 51(1);
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The hearing was conducted by teleconference. The tenant attended. The hearing process was explained, and the tenant had the opportunity to ask questions. The tenant had the opportunity to make submissions, present documentary evidence, and call witnesses.

The tenant confirmed they were not recording the hearing. The tenant also confirmed the email address to which the Decision and any Order shall be sent.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 23 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 both landlords had been provided.

Preliminary Issue – Service of Notice of Hearing and Evidence Package

As the landlord did not attend the hearing, I considered whether the tenant served the landlord as required under the Act.

The tenant provided affirmed testimony as follows.

The tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail at two addresses. Each was sent on September 26, 2021 and deemed received by the landlord under section 90 of the *Act* five days later, that is, on October 1, 2021.

The tenant testified they sent the documents, firstly, to the address of the landlord in the tenancy agreement. The second was to the landlord's address contained in the 4 Month Notice the landlord served upon the tenant during the tenancy.

The tenant also sent the documents by email to the landlord at the email address used by the landlord throughout the tenancy in communication with the tenant.

The tenant provided a copy of the receipts for the registered mail and the Canada Post Tracking Numbers in support of service.

The Act sets out how documents must be served. Section 89(c) of the Act addresses service by registered mail. The entire section 89 states as follows, with added emphasis:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given 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 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 registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].
[emphasis added]

The Rules of Procedure set out the obligation of the applicant, the tenant in this case, to provide proof of service. Section 3.5 states as follows:

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Further to the tenant's credible testimony, which is supported by documentary evidence, I find the tenant served the landlord as required under the Act on October 1, 2021.

Preliminary Issue – Doubling

I informed the tenant of the provisions of section 38 of the *Act* which require that the security deposit is doubled if the landlord does not return the security deposit to the tenant within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

Issue(s) to be Decided

Is the tenant entitled to a doubling of the security deposit under section 38?

Is the tenant entitled to compensation under section 51?

Is the tenant entitled to reimbursement of the filing fee under section 72?

Background and Evidence

The tenant testified that they were seeking a doubling of the security deposit under section 38, compensation of 1 month's rent as compensation for issuance of a 4 Month Notice dated March 24, 2021 and prorated reimbursement of rent for the final 11 days of the tenancy as they moved out early.

The landlord did not attend. Accordingly, the tenant provided uncontradicted testimony and evidence.

The tenant submitted a copy of the tenancy agreement and testified to the background of the tenancy:

INFORMATION	DETAILS
Type of tenancy	Monthly
Date of beginning	December 1, 2020
Date of end of tenancy	August 31, 2021
Monthly rent payable on 1 st	\$1,910.00
Security deposit	\$1,910.00
Forwarding address provided	Before moving out on August 22, 2021
Date of vacancy	August 22, 2021
Date of Application	September 17, 2021

The tenant testified he was served with the landlord's 4 Month Notice on March 24, 2021, which was in the standard RTB form. The effective date of the Notice was August 31, 2021. The tenant did not dispute the Notice. The Notice stated the landlord had to compensate the tenant an amount equal to one month's rent payable under the tenancy agreement which is required under the Act. The tenant agreed to move out at the end of August 2021 as requested.

The tenant testified they did not pay rent for the final month of August 2021.

They gave the landlord ten days notice by email that they would be vacating the unit early, that is, on August 22, 2021, and requested a proportionate repayment of rent for vacating early. The tenant's email stating they were moving out early and the landlord's reply acknowledging the notice were submitted as evidence. The tenant claimed reimbursement of prorated rent being \$554.92 as they vacated early in addition to the one month's rent as compensation.

The landlord informed the tenant by email, a copy of which was submitted, that the security deposit would be applied to the last month's rent as the landlord had offered the tenant an opportunity to stay longer, thereby cancelling the Notice. The tenant testified that they had already rented another place and declined the offer to stay longer. The tenant did not accept the cancellation of the Notice.

The tenant testified they provided their forwarding address to the landlord by email before moving out, and the landlord acknowledged receipt. Copies of the email exchange were submitted as evidence.

The tenant stated that the landlord has not brought an application to retain the security deposit and the tenant has not authorized the landlord to retain it.

The tenant did not submit a copy of the condition inspection reports and testified that the unit was in good condition when they moved out.

The tenant testified the balance of the security deposit has not been paid.

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.

The tenant requested reimbursement of the filing fee of \$100.00.

The tenant clarified their monetary claim during the hearing which is summarized in the following table:

ITEM	AMOUNT
Security deposit	\$1,910.00
Security deposit - doubling	\$1,910.00
Filing fee reimbursement	\$100.00
Rent from August 22 to August 31, 2021	\$554.92
TOTAL CLAIM	\$4,474.92

The tenant requested a Monetary Order in the amount of \$4,474.92.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

Security deposit

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 find the landlord's email to the tenant stating the tenant could stay longer is not a cancellation of the Notice. I find the landlord's assertion that they will therefore apply the security deposit to rent for the final month of the tenancy to be invalid.

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

I accept the tenant's evidence supported by a copy of the email that the tenant gave the landlord written notice of their forwarding address on August 22, 2021.

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**.

Compensation

The applicable section of the *Act* is 51(1):

Tenant's compensation: section 49 notice

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.

The Act authorised the tenant to vacate early upon provision of ten days notice and the payment of rent to the vacancy date. Section 50(1) stated:

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
- (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

I find the tenant has received the required compensation under the Act, that is, one month's rent. I find the tenant is not entitled to additional compensation.

I find the landlord is not authorized to apply the security deposit to the last month's rent. I find the purported cancellation of the Notice to be ineffective and void.

I dismiss the tenant's application for additional compensation without leave to reapply.

Filing Fee

As the tenant is successful in the application, I award the tenant reimbursement of the filing fee under section 72.

Summary

In conclusion, I award the tenant a monetary award calculated as follows:

ITEM	AMOUNT
Security deposit	\$1,910.00
Security deposit - doubling	\$1,910.00
Filing fee reimbursement	\$100.00
TOTAL MONETARY ORDER	\$3,920.00

Conclusion

I grant the tenant a Monetary Order in the amount of **\$3,920.00** as described above.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Courts of the Province of BC to be enforced as an order of that Court.

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 11, 2022

Residential Tenancy Branch