



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **MNETC, MNSD, FFT**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- 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 for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended the hearing with friend and advocate GFG ("the tenant") 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 60 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.

*Landlord's Address*

As the landlord did not attend the hearing, I directed my attention to service upon the landlord by the tenant.

The tenant testified this is the second hearing between the parties. Reference to the first Application for Dispute Resolution and the file number appear on the first page.

In the previous hearing, the tenant brought an Application for Dispute Resolution for the same relief. The matter was heard and both parties attended on August 27, 2021.

The landlord informed the Arbitrator that he had not been served with the Notice of Hearing and Application for Dispute Resolution.

In a Decision dated August 27, 2021, the Arbitrator dismissed the tenant's application with leave to reapply. The Arbitrator stated:

The landlord's address for receiving the tenant's application is recorded on the front page of this decision.

The tenant's forwarding address is also recorded on the front page of this decision.

Thee above addresses are referenced on the first page of my Decision.

The landlord's stated address is referenced as "the landlord's address".

The tenant's stated address is referenced as "the tenant's address".

A copy of the Decision was sent by the RTB to both parties.

*Service upon the Landlord*

The tenant provided affirmed testimony that she sent the Application for Dispute Resolution and Notice of Hearing to the landlord by registered mail to the landlord's address on September 3, 2021. The tenant submitted the receipt from Canada Post and the tracking number.

The landlord submitted evidence on May 17 and 18, 2022 but did not attend the hearing.

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 following:

- 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 for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

### Background and Evidence

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

#### *Background*

The monthly tenancy began on September 1, 2016. Rent was \$925.00 and the tenant provided a security deposit of \$425.00 which the landlord holds without the tenant's authorization.

#### *Two Month Notice*

On November 26, 2020, the landlord served the tenant with a Two Month Notice with an effective date of February 1, 2021. The Notice was in the standard RTB form. It stated the landlord intended to occupy the unit. The tenant accepted the Notice and moved out on February 15, 2022.

### *Condition Inspection Reports*

The tenant testified there was no condition inspections on moving in or out. No reports were submitted.

### *Landlord Occupation of the Unit*

The tenant testified that the unit was a mobile home. People the tenant knew occupied a nearby residence. This person is referred to as the “neighbour”.

After they moved out, the landlord informed the tenant that they were responsible for some breakage in the unit. He said he would not be returning the security deposit.

The tenant returned to the unit to investigate the alleged damage. She was surprised to be met at the door by the neighbour who told her they were now living in the unit and had moved in right after the tenant moved out. The neighbour told the tenant that the landlord was living in the unit previously lived in by the neighbour which was also owned by the landlord.

The tenant believed the landlord evicted her, not so the landlord could move in, but so the neighbour could move in, and the landlord could live in the neighbour’s previous residence.

The tenant testified the unit is in a small town. The tenant and neighbour met by chance several months after the tenant moved out. The neighbour informed her they were still living in the unit and had no plans to leave. The landlord was still living in the neighbour’s previous residence.

As stated, the landlord provided his address during the previous hearing on August 27, 2021, six months after the tenant moved out on February 15, 2021. The tenant testified that this address, referenced on the first page, is not the address of the unit.

The tenant’s forwarding address was provided to the landlord in the previous hearing and is referenced on the first page.

The tenant repeatedly requested that the landlord return the security deposit to no avail.

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

In summary, the tenant requested 12 months rent as compensation as the landlord did not carry out the purpose stated in the Two Month Notice, the return of 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.

Although the tenant could not locate a copy of the Notice and did not submit it as evidence, I accept the tenant's reliable evidence that she was served by the landlord with the Two Month Notice as described. The tenant testified to the difficulty in finding another place to live. They were unable to find a new place and have moved in with the friend and advocate who accompanied the tenant at the hearing. The tenant said they would never have moved without being served with the Notice. I accept the credible and consistent evidence of the testimony regarding the service of the Notice.

Based on all the above, the evidence and testimony from the landlord and tenant, and on a balance of probabilities, I find as follows.

On November 26, 2020, the landlord served the tenant with a Two Month Notice with an effective date of February 1, 2021. The Notice was in the standard RTB form. It stated the landlord intended to occupy the unit. The tenant accepted the Notice and moved out on February 15, 2022.

I accept the tenant's testimony that they returned to the unit shortly after moving out and found the neighbour living there. I find the landlord did not move into 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 Two Month 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.

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 payable under the tenancy agreement which I find is \$11,100.00.

I grant an award to the tenant under this heading of \$11,100.00.

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 \$11,200 calculated as follows:

ITEM	AMOUNT
12 times monthly rent	\$11,100.00
Reimbursement filing fee	\$100.00
<b>TOTAL</b>	<b>\$11,200.00</b>

### *Security deposit*

I accept the tenant's credible testimony in all aspects and find as follows. The landlord conducted no condition inspection on moving in or out. He refused to return the tenant's security deposit of \$425.00.

The tenant did not agree that the landlord withhold any of the security deposit.

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 which was on the first page of the previous Decision, referenced earlier.

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**.

### *My Award*

I grant the tenant a Monetary Order of **\$12,050.00** calculated as follows

ITEM	AMOUNT
12 times monthly rent	\$11,100.00
Reimbursement filing fee	\$100.00
Security deposit	\$425.00
Doubling of security deposit	\$425.00
<b>TOTAL MONETARY ORDER</b>	<b>\$12,050.00</b>



Conclusion

I grant the tenant a Monetary Order in the amount of **\$12,050.00** 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 20, 2022

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Residential Tenancy Branch