



# 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 and one month's rent as compensation under sections 51 and 67 pursuant to the Two Month Notice to End Tenancy for Landlord's Use ("the Two Month Notice") ;
- 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 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 tenant testified that the three landlords are a family, being spouses and an adult son.

The landlords ("the landlord") did not appear at the hearing. I kept the teleconference line open 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 each of the landlords by separate registered mail to their address as set out in the Two Month Notice on October 21, 2021. The tenant submitted copies of the receipts from Canada Post and the tracking numbers.

Further to the tenant's testimony and documents, I find the tenant served the landlord in compliance with section 89 and 90 of the Act five days after mailing the documents, on October 26, 2021.

### Issue(s) to be Decided

Is the tenant entitled to:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement and one month's rent as compensation 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. Not all this evidence is referenced in my Decision. Only key, relevant information in support of the facts and my findings are referenced.

### *Background of Tenancy*

The tenant submitted a copy of the tenancy agreement. The monthly tenancy of the unit, an apartment, began on September 22, 2011. Rent was \$1,350.00 and the tenant provided a security deposit of \$500.00.

### *Two Month Notice*

On June 9, 2021, the landlord posted a Two Month Notice to the tenant's door. The tenant acknowledged service effective 3 days later, being Jun 12, 2021.

The tenant submitted a copy of the Notice was in the standard RTB form. The Notice stated the landlord intended to occupy the unit.

The Notice stated:

If this Notice was served under the reasons for landlord's use of property, on or before the effective date of this Notice, **your landlord has to compensate you an amount equal to one month's rent payable under your tenancy agreement.** You may withhold your last month's rent instead of being paid compensation. If you have already paid your last month's rent, your landlord must refund you that amount.

(Emphasis added)

The tenant accepted the Notice and did not file a dispute. The parties agreed the tenant could move out on June 30, 2022. The landlord did not provide the tenant with the one month's rent as compensation either during or after the tenancy.

The tenant moved out on June 30, 2022.

### *Ending of Tenancy*

The tenant testified the parties met for an inspection of the unit on June 30, 2021, and the landlord said the unit was in a satisfactory condition.

The landlord has not brought an application to keep the security deposit.

No Condition Inspection Reports were submitted.

### *Security Deposit and One Month's Rent as Compensation*

When the tenant moved out, the landlord promised to return the security deposit and pay one month's rent as compensation and has not done so.

The tenant submitted copies of an exchange of texts between the parties on July 7, 2021. The landlord requested the tenant provide a Notice of Forwarding Address in the RTB form following which they would pay the tenant one month's rent as compensation and return the security deposit. A portion of the text exchange quotes the landlord as follows:

Please serve me a rtb-47 by mail or in person to my office [address]. A cheque will be issued once the notice is received. Thank you for your cooperation.

The tenant provided the landlord with the RTB form containing their forwarding address and submitted a copy as evidence. The Notice is dated July 8, 2021. The tenant testified they sent the notice to the address in the landlord's text, above.

The landlord did not pay the tenant the one month's rent as compensation and did not return the security deposit.

The tenant testified they contacted the landlord many times requesting the funds and the landlord did not reply.

#### *Landlord Occupation of the Unit*

The tenant testified that they are a realtor. They know the building manager in which the unit is located. They were informed by the building manager that the landlord did not move into the unit after they moved out.

The tenant discovered the unit was listed for sale of September 22, 2021, and was sold the following day, on September 23, 2021. The landlord submitted a copy of the standard listing information confirming the unit was listed and sold as testified.

From the information they received, the tenant believed the landlord evicted her, not so the landlord could move in as stated in the Notice, but in order that the landlord could sell the unit.

The tenant claimed that they are entitled to 12 months' rent as compensation as the landlord did not move into the unit and sold it instead.

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, one month's rent as compensation under the Two Month Notice, the return of double the security deposit and reimbursement of the filing fee.

The tenant's claim is summarized as follows:

ITEM	AMOUNT
12 month's rent as compensation (\$1,350.00 x 12)	\$16,200.00
One month's rent as compensation	\$1,350.00
Security deposit	\$500.00
Double security deposit	\$500.00
Filing fee	\$100.00
<b>TOTAL TENANT'S CLAIM</b>	<b>\$18,650.00</b>

### Analysis

This application involves consideration of the applicable sections of the *Act* dealing with the termination of tenancy by the landlord for the landlord's use of the property.

The landlord did not attend the hearing. The tenant provided a credible and well documented claim and met the burden of proof supporting an award for the tenant in all aspects of the claim.

Based upon the tenant's credible evidence and testimony, I find as follows.

#### *Two Month Notice and Compensation of One Month's Rent*

The landlord issued a Two Month Notice stating the landlord intended to occupy the unit. They served the tenant effective June 12, 2021. The Notice was in the standard RTB form.

A landlord is required to give the tenant one month's rent as compensation when they issue a Two Month Notice. Section 51(1) states:

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.

The Notice provided:

If this Notice was served under the reasons for landlord's use of property, on or before the effective date of this Notice, **your landlord has to compensate you an amount equal to one month's rent payable under your tenancy agreement.** You may withhold your last month's rent instead of being paid compensation. If you have already paid your last month's rent, your landlord must refund you that amount.

(Emphasis added)

The tenant rented the unit for \$1,350.00 a month.

The tenant did not dispute the Notice. The parties agreed the tenant would vacate the unit on June 30, 2021. The tenant and landlord met that day and conducted an inspection, the landlord found the unit in good condition and the tenant moved out.

On July 7, 2021, the landlord promised by text to send the tenant the compensation upon receipt of the tenant's forwarding address. The tenant sent the forwarding address in the RTB form. The landlord has not provided the compensation despite multiple requests by the tenant.

As the landlord has not provided the required one month's rent as compensation, I grant an award to the tenant in the amount of \$1,350.00, the monthly rent.

### *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.

As stated above, I find the landlord issued a Two Month Notice as testified by the tenant. I accept the tenant's testimony supported by the documentary evidence of the listing and sale agreement and find the landlord sold the unit on September 23, 2021. I accept the tenant's testimony that they knew the building manager who informed them

the landlord had never moved into the unit. I find the tenant's conclusion reasonable that the landlord did not move into the unit.

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 \$16,200.00.

Therefore, I grant an award to the tenant under this heading of \$16,200.00.

### *Security deposit*

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

The landlord did not return the tenant's security deposit of \$500.00 after they moved out. The tenant provided their forwarding address.

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 as contained in the submitted Notice of Forwarding Address.

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.

Accordingly, I award the tenant \$1,000.00 under this claim.

#### *Filing Fee*

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.

#### *Summary of Award*

I grant the tenant a Monetary Order of **\$18,650.00** as follows:

ITEM	AMOUNT
12 month's rent as compensation (\$1,350.00 x 12)	\$16,200.00
One month's rent as compensation	\$1,350.00
Security deposit	\$500.00
Double security deposit	\$500.00
Filing fee	\$100.00
<b>TOTAL Monetary Order</b>	<b>\$18,650.00</b>

#### Conclusion

I grant the tenant a Monetary Order in the amount of **\$18,650.00** 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: June 07, 2022

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Residential Tenancy Branch