



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC MNSD FFT

### Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied for a monetary order in the amount of \$31,600.00, for the return of their security deposit, for 12 months' compensation related to the reason stated in the 2 Month Notice to End Tenancy for Landlord's Use of Property dated December 20, 2020 (2 Month Notice) not being complied with under the Act, and to recover the cost of the filing fee.

The tenants attended the teleconference hearing and were affirmed. The hearing process was explained, and the tenants were given an opportunity to ask questions about the hearing process. Thereafter the tenants 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. I have reviewed all oral and documentary 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.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing dated October 21, 2021 (Notice of Hearing), the application and documentary evidence were considered. The tenants provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the landlord by registered mail on October 22, 2022. The registered mail tracking number has been included on the cover page of this Decision for ease of reference. According to the Canada Post registered mail tracking website, the registered mail package was marked as "unclaimed" and returned to the sender on November 18, 2022. Documents sent by registered mail are deemed served 5 days after mailing pursuant to section 90 of the Act.

As a respondent cannot avoid service under the Act, I find the landlord was duly served on the fifth day after mailing on October 27, 2021, in accordance with the Act. I note that refusal or neglect on the part of the respondent to accept a registered mail package does not constitute grounds for an Application for Review Consideration under the Act.

#### Preliminary and Procedural Matter

The tenants confirmed their email address at the outset of the hearing and stated that they understood that the decision and any resulting monetary order would be emailed to them. As the tenants do not have an email address for the landlord, the decision will be sent by regular mail to the landlord.

#### Issues to be Decided

- Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- Are the tenants entitled to the return of their security deposit under 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 the tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 1, 2018 and converted to a month-to-month tenancy after February 28, 2021. Monthly rent was \$2,500.00 per month and was due on the first day of each month. Although the tenants paid a security deposit of \$1,500.00, which exceeds the 50% of rent permitted, the tenants confirmed that they were not sure if they ever provided their written forwarding address to the landlord since vacating the rental unit on February 28, 2021. Given the above, I will address the tenants' security deposit later in this Decision.

There is no dispute that the tenants accepted the 2 Month Notice to End Tenancy for Landlord's Use of Property dated December 20, 2020 (2 Month Notice) with an effective vacancy date of February 28, 2021. The reason stated on the 2 Month Notice is:

☒ 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).

Please indicate which close family member will occupy the unit.

- ☒ The landlord or the landlord's spouse  
☐ The child of the landlord or landlord's spouse  
☐ The father or mother of the landlord or landlord's spouse

The tenants filed their application in October 2021, which is within the allowable two-year timeline under the Act to apply for compensation under the Act related to a 2 Month Notice. As the tenants filed on time, the onus of proof reverts to the landlord to prove that they complied with the reason stated on the 2 Month Notice or had a valid extenuating circumstance that prevented them from doing so. As the landlord failed to attend the hearing to present any evidence to rebut the tenant's claim, the tenants were provided the opportunity to present their evidence.

The tenants presented documentary evidence that shows the rental unit was listed for sale on March 14, 2021 and sold on March 25, 2021 for \$1,199,000.00. This makes the listing just 2 weeks after the effective vacancy date listed on the 2 Month Notice and the sale date within 25 days of the effective vacancy date.

### 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.

I will first address the tenants' security deposit. Section 19(1) of the Act applies and states:

#### **Limits on amount of deposits**

**19(1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.**

[emphasis added]

As the tenancy agreement indicates that monthly rent is \$2,500.00 per month, I find the \$1,500.00 security deposit **exceeds 50% of the monthly rent**. Therefore, **I caution** the landlord not to breach section 19(1) of the Act in the future.

In addition, although the tenants paid a security deposit of \$1,500.00, which exceeds the 50% of rent permitted, the tenants confirmed that they were not sure if they ever provided their written forwarding address to the landlord since vacating the rental unit on February 28, 2021. Given that the tenancy ended on February 28, 2021, I find section 39 of the Act applies, which states:

**Landlord may retain deposits if forwarding address not provided**

**39** Despite any other provision of this Act, **if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,**

**(a) the landlord may keep the security deposit or the pet damage deposit, or both, and**

**(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.**  
[emphasis added]

The hearing was held on June 10, 2022, which is beyond the one-year period between February 28, 2021 and the end of February 27, 2022. In addition, I have also considered that RTB Practice Directive 2015-01, which states in part the following:

A forwarding address only provided by the tenant on the Application for Dispute Resolution form **does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address.**

[emphasis added]

Given the above, I find the landlord may keep the entire \$1,500.00 security deposit as the tenants have provided insufficient evidence that a written forwarding address was provided by separate document within one year of February 28, 2021.

**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]

As the landlord failed to attend the hearing to oppose this application and present any rebuttal evidence, I accept the tenant's evidence that the landlord made the decision to sell the rental unit and listed the property for sale on March 14, 2021 and sold the property 2 weeks later on March 25, 2021. Therefore, I find the landlord failed to use the property for the stated purpose within a reasonable period after the effective date of the 2 Month Notice and using the rental unit for that stated purpose for at least 6 months' duration and did not present any extenuating circumstances by not attending the hearing. Therefore, I find the tenants are entitled to **\$30,000.00** in compensation from the landlord, comprised of 12 times the monthly rent of \$2,500.00 pursuant to section 51(2) of the Act.

As the tenants' application was mostly successful, I also grant the tenants 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 tenants have established a total monetary claim of **\$30,100.00** comprised of \$30,000.00, which is 12 times the \$2,500.00 monthly rent, plus the \$100.00 filing fee.

### Conclusion

The tenants' application is mostly successful.

The landlord may retain the tenants' security deposit as noted above.

The landlords failed to use the rental unit for the stated purpose as noted above and instead sold the rental unit shortly after the effective vacancy date. The tenants have been granted 12 times the monthly rent and are granted a monetary order pursuant to section 67 of the Act, in the amount of \$30,100.00 as indicated above. This order must be served on the landlord with a demand for payment letter. Should the tenants require enforcement of the monetary order, the monetary order may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties.

The monetary order will be emailed to the tenants only for service on the landlord.

Should the landlords fail to pay the monetary order once served upon them, they could be held liable for all costs related to enforcement of the monetary order.

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: June 29, 2022

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Residential Tenancy Branch