



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MacGregor Realty
and [tenant name suppressed to protect privacy]

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:

- 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 landlord and the lawyer DM (“the landlord”) attended. All parties were given a full opportunity to be heard, to present sworn testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the Application for Dispute Resolution and evidentiary package, while the tenant confirmed receipt of the landlord’s evidentiary package. All parties are found to have been served in accordance with the *Act*.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

The parties confirmed their email addresses to which a copy of this Decision shall be sent.

The parties agreed to the removal of the corporate respondent MR as a named landlord. The parties agreed MR was the landlord's agent.

Preliminary Issue – Settlement

I explained to the parties that under section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute. If the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I explained to the parties that I do not provide legal or any advice. They could call the RTB Information Officers or consult the website for help and information. They could settle the issues outside or during the hearing.

The parties spent considerable time discussing possible settlement. They did not reach settlement.

Accordingly, the hearing continued.

Issue(s) to be Decided

Is the tenant entitled to a monetary award? Can the tenant recover the filing fee?

Background and Evidence

The parties submitted considerable disputed testimony in a 90-minute hearing scheduled for one hour. Not all this evidence is referenced. I refer in my Decision to key, relevant and admissible facts only in support of my findings.

The tenant provided testimony as follows. The parties entered into a tenancy agreement for an apartment beginning June 16, 2020 and ending on November 30, 2021.

Rent and Security deposit

The parties disagreed regarding the amount of rent. The tenant testified she paid \$1,600.00 a month. The landlord stated rent was \$1,800.00 with a “credit” of \$200.00 for cleaning.

The parties agreed the tenant paid \$800.00 as security deposit as the beginning of the tenancy.

The parties agreed the tenant provide her forwarding address in writing to the landlord on November 30, 2022.

The tenant testified the landlord did not return the security deposit within 15 days. The tenant stated she received a bank draft for \$800.00 in an envelope post marked December 14, 2022 containing a handwritten letter dated December 10, 2022 well after the 15 day period.

The tenant claimed the security deposit should be doubled as she did not receive it within 15 days of the later of the end of the tenancy or the provision of her forwarding address in writing.

The landlord testified the bank draft for the return of the security deposit was placed in regular mail, not registered mail, on December 9, 2021 within the 15 day period with a deemed receipt date of December 14, 2021. The landlord submitted it was unlikely the tenant would have received the envelope outside the 15-day period.

The tenant requested an award for a doubling of the security deposit with a balance owing after partial payment of \$800.00.

Compensation -12 Months

The tenant argued she is entitled to 12 months rent as compensation under section 51 of the Act as the landlord did not occupy the unit after she moved out. The tenant testified that the landlord informed her that he required vacant possession of the rental unit so it could be occupied by him for his own personal use. The tenant provided testimony that she “felt pressure and bullied” to move out or pay more rent which she could not afford. She testified the landlord called her every month explaining his family was “suffering” and asking her to move out.

The tenant acknowledged she was not served with a Two Month Notice to End Tenancy for Landlord’s Use or any RTB Notice to End Tenancy. She vacated the unit on November 30, 2021. The tenant asserted that the landlord’s actions amounted to a demand that she moves out so that the landlord could occupy the unit.

The landlord testified as follows. He denied the tenant’s interpretation of events leading up to her moving out. He stated he considered occupying the unit but decided against it. The tenant was informed by the landlord’s agent in writing in advance of moving out that no Two Month Notice would be issued.

Summary of Claims

The tenant requested an award of 12 times the monthly rent, \$800.00 for the balance due on the security deposit, and reimbursement of the filing fee.

The landlord requested the tenant’s claims be dismissed without leave to reapply.

Analysis

Rule of Procedure 6.6 states, “The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the

person making the claim. In most circumstances this is the person making the application.”

The tenant has applied for a monetary award and must therefore demonstrate their entitlement to an award based on a breach of the Act, their tenancy agreement or the Regulations.

Each of the tenant’s claims are addressed.

Tenant’s Claim for Compensation - Section 51

Section 44(1) of the Act states:

A tenancy ends only if one or more of the following applies.

(a) the landlord gives notice to end the tenancy in accordance with one of the following:

...

(v) section 49 [landlord’s notice: landlord’s use of property]

As noted in section 49(4), for a notice to be valid, “A notice under this section must comply with section 52.”

Section 52 provides very specific requirements for a notice to end tenancy. To be effective, a notice to end a tenancy must be in writing and must be signed and dated by the landlord or tenant giving the notice, give the address of the rental unit, state the effective date of the notice, except for a notice under section 45 (1) or (2) [tenant’s notice], state the grounds for ending the tenancy, and when given by a landlord, be in the approved form. (underlining added)

Section 51 of the Act clearly states that a tenant must receive a notice to end tenancy under section 49 to be entitled to any compensation. This position is supported by Policy Guideline #50 which notes:

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).

I find that the tenant was not given a notice to end tenancy and therefore was under no obligation to vacate the property. She is considered to have vacated under her own volition.

While the tenant testified she was informed by the landlord of his intention to occupy the unit, I find that I have no power to issue any compensation.

For these reasons, I dismiss the tenant's application for compensation under this heading without leave to reapply.

Security deposit

The Act sets out the requirement of the landlord to return the security deposit:
Return of security deposit and pet damage deposit:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 90 sets out when documents are considered received:

When documents are considered to have been received

90 A document given or served in accordance with section 88 [how to give or serve documents generally] or 89 [special rules for certain documents], unless earlier received, is deemed to be received as follows:

...

if given or served by mail, on the fifth day after it is mailed;

Parties frequently send documents by registered mail to provide documentary evidence of the mailing date. The landlord testified he sent the documents by regular mail and therefore has not provided documentary evidence of the date of the mailing.

Considering the evidence, I find the landlord has not met the burden of proof that he returned the security deposit within 15 days. I accordingly award the tenant a doubling of the security deposit.

Filing fee

As the tenant has been successful in this matter, I award the tenant \$100.00 for reimbursement of the filing fee.

Summary of Award

I accordingly award the tenant a doubling of the security deposit and reimbursement of the filing fee as follows:

ITEM	AMOUNT
Filing fee	\$100.00
Security deposit	\$800.00
Security deposit – doubling	\$800.00
(Less payment made)	(\$800.00)
TOTAL MONETARY ORDER	\$900.00

I grant the tenant a Monetary Order of \$900.00.

Conclusion

The tenant's application for compensation under section 51 is dismissed without leave to reapply.

The tenant is granted a Monetary Order for return of the security deposit and reimbursement of the filing fee in the amount of \$900.00.

This Monetary Order must be served on the landlord. The Order may be filed and enforced as an Order of 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: July 27, 2022

Residential Tenancy Branch