



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, MNETC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on January 15, 2022. The Tenants applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order that the Landlords return the security deposit and/or pet damage deposit;
- a monetary order for compensation for monetary loss or other money owed;
- a monetary order for compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property; and
- an order granting recovery of the filing fee.

The Tenants and the Landlords attended the hearing and provided affirmed testimony.

The Tenants testified the Notice of Dispute Resolution Proceeding package was served on each of the Landlords by registered mail on January 28, 2022. A Canada Post registered mail receipt showing the date and time of purchase and including the tracking numbers were submitted in support. The Canada Post website was also consulted during the hearing to confirm service in this manner. The Landlord denied receipt. However, I find it is more likely than not that the Tenants served these documents on the Landlords by registered mail. Pursuant to sections 89 and 90 of the Act, documents served by registered mail are deemed to be received five days later. Therefore, I find these documents are deemed to have been received by the Landlords on February 2, 2022.

The Landlords submitted documentary evidence in response to the application. The Landlords testified that documentary evidence was served on the Tenants by email on August 11, 2022. The Tenants acknowledged receipt but testified that they were unsure about the safety of opening documents from the Landlords. In any event, the Tenants testified they were prepared to proceed with their application despite not having viewed the Landlords' documents. Therefore, pursuant to sections 88 and 90 of the Act, I find the Landlords' evidence is deemed to have been received by the Tenants on August 14, 2022, three days after it was sent.

No further issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlords return the security deposit and/or pet damage deposit?
2. Are the Tenants entitled to a monetary order for compensation for monetary loss or other money owed?
3. Are the Tenants entitled to a monetary order for compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property?
4. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on March 1, 2020 and ended on December 28, 2021. At all material times, rent of \$1,000.00 per month was due on the first day of each month. The parties agreed the Tenants paid a security deposit of \$500.00, which the Landlords hold. A copy of the signed tenancy agreement was submitted into evidence.

The Tenants' claims are particularized in the application. First, the Tenants seek double the amount of the security deposit held by the Landlords in accordance with section 38 of the Act.

The Tenants testified that they provided the Landlords with a forwarding address in writing on December 17, 2021. A copy of a letter dated December 17, 2021 was submitted into evidence. The Tenants testified the letter was given to DY in person and to SA by email on December 17, 2021. A copy of an email to SA was submitted in support.

The Landlords acknowledged receipt of the letter and the Tenants' forwarding address. However, DY testified there was damage to the walls of the rental unit, and that the walls were painted without the Landlords' permission. DY could not recall whether a move-in condition inspection was completed but confirmed that a move-out condition inspection was not completed. The Tenants denied that either were completed. The Landlords submitted photographs and video of the interior of the rental unit in support.

Second, the Tenants seek a monetary award of \$96.77 for pro-rated rent from December 29-31, 2021. DY confirmed during the hearing that the Landlords agree with this aspect of the Tenants' claim.

Third, the Tenants seek a monetary award of \$35.00 for the Landlords' failure to provide internet service as stipulated in the tenancy agreement. The Tenants testified that internet service was cut off after they provided the Landlords with the letter dated December 17, 2021, and that they lost service for 7 days. The Tenants based this aspect of their claim on information provided by TELUS suggesting a daily rate of \$5.00 (\$5.00 per day x 7 days = \$35.00).

DY submitted that the Landlords should not have to pay what he stated is 50% of his internet bill because his child broke the router.

Fourth, the Tenants seek compensation of \$1,000.00 for having received the Two Month Notice, in accordance with section 51(1) of the Act.

The Tenants acknowledged receipt of the Two Month Notice on December 1, 2021. The Tenants, however, issued a 10-day notice to end the tenancy early in accordance with section 50 of the Act, ending the tenancy on December 28, 2021.

DY testified that the Tenants breached the tenancy agreement consistently by parking two vehicles at the rental property when only one parking space was provided, and by storing their belongings outdoors. DY suggested the Landlords could have given the Tenants other notices but did not.

The Tenants also seek to recover the filing fee paid to make the application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

With respect to the Tenants claim for double the amount of the security deposit, section 38(1) of the Act requires a landlord to repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the Act confirms the tenant is entitled to the return of double the amount of the deposits. The language in the Act is mandatory.

In this case, I find the Tenants provided the Landlords with their forwarding address on December 17, 2021. Therefore, the Landlords had until January 12, 2022 – 15 days after the date the tenancy ended – to either repay the security deposit or make an application to keep it by filing an application for dispute resolution. I find the Landlords did neither.

Considering the above, pursuant to section 38 of the Act, I find the Tenants have established an entitlement to recover double the amount of the security deposit held, or \$1,000.00 (\$500.00 x 2). I grant the Tenants a monetary award in that amount.

With respect to the Tenants' claim for pro-rated rent from December 29-31, 2021, section 50(1) of the Act permits a tenant who receives a Notice to End Tenancy for Landlord's Use of Property to end the tenancy early by 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. Section 50(2) of the Act confirms that if rent was paid in full before giving notice under section 50(1) of the Act, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

In this case, I find that the Tenants paid rent in full for the month of December 2021. I also find the Tenants ended the tenancy early by giving the Landlords a 10-day notice to end tenancy, which was effective December 28, 2021. Therefore, pursuant to section 50(2) of the Act, I find the Landlords must refund rent paid after the effective date of the Tenants' notice.

I find that the pro-rated daily rent for December 2021 was \$32.26 (\$1,000.00 / 31 days). Therefore, rent due to the Tenants for the three days from December 29-31, 2021 is \$96.78 (\$32.26 x 3 days). I grant the Tenants a monetary award of \$96.78.

With respect to the Tenants' request for \$35.00 for the Landlords' failure to provide internet service for seven days, the Landlords agreed there was a disruption in a service provided for in the tenancy agreement. Further, I find the Tenants' calculation of the value of the loss of internet service to be reasonable. Therefore, I grant the Tenants a monetary award in the amount of \$35.00.

With respect to the Tenants' claim for \$1,000.00, the Dispute Code used by the Tenants suggested they are seeking compensation under section 51(2) of the Act. However, their application and evidence confirmed they are requesting compensation under section 51(1) of the Act, which states:

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.

A landlord's requirement to pay this compensation is echoed in Policy Guideline #50, which adds:

A tenant who is entitled to receive one month's rent under these sections may instead withhold that amount from the last month's rent. If the tenant ends the tenancy earlier in these circumstances, as permitted by section 50 of the RTA, and before withholding the last month's rent, the landlord must refund that amount. [underlining added]

In this case, I find that the Tenants received a Two Month Notice on December 1, 2021. As a result, pursuant to section 51(1) of the Act and Policy Guideline #50, I find the Tenants are entitled to compensation in the amount of \$1,000.00.

As the Tenants have been successful, I find they are entitled to recover the \$100.00 filing fee paid to make the application.

Pursuant to section 67 of the Act, I grant the Tenants a monetary order for \$2,231.78, which has been calculated as follows:

Relief claimed:	Amount awarded:
Security deposit:	\$1,000.00
Pro-rated rent (Dec. 29-31/21):	\$96.78
Loss of internet service (7 days):	\$35.00
Section 51(1) compensation:	\$1,000.00
Filing fee:	\$100.00
TOTAL:	\$2,231.78

Conclusion

The Tenants are granted a monetary order in the amount of \$2,231.78. The order must be served on the Landlords. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: August 25, 2022

Residential Tenancy Branch