



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, MNSD, FFT

### Introduction

In this application for dispute resolution, the tenant applied on January 30, 2022 for:

- compensation because the landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose;
- an order for the return of the security deposit and/or pet damage deposit; and
- recovery of the filing fee.

The hearing was attended by the tenant but not the landlord. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; he was made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The tenant testified he served the Notice of Dispute Resolution Proceeding and his evidence on the landlord by registered mail on February 11, 2022, and provided a tracking number as noted on the cover page of this decision. I find the tenant served his materials on the landlord in accordance with section 89 of the Act and deem them received by the landlord on February 16, 2022, pursuant to section 90.

### Preliminary Matter

I have amended the application to correct the order of the landlord's name to match with the tenancy agreement and as confirmed by the tenant.

### Issues to be Decided

- 1) Is the tenant entitled to compensation because the landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose?
- 2) Is the tenant entitled to a monetary order for the return of the security deposit?
- 3) Is the tenant entitled to the filing fee?

### Background and Evidence

The tenant provided the following particulars regarding the tenancy. It began March 1, 2019 and ended on December 28, 2021; rent was \$1,350.00, due on the first of the month, and the tenant paid a security deposit of \$675.00, which the landlord still holds.

A copy of the tenancy agreement was submitted as evidence.

The tenant's application states he found a Two Month Notice to End Tenancy for Landlord's Use of Property in his unit on November 1st. The tenant testified that he called the landlord the same day to ask him about the Two Month Notice, and that the landlord said he decided to sell the unit and asked the tenant to vacate by the end of the year. The tenant testified the landlord said he is required to pay the tenant the amount of one month's rent, but that he would pay the tenant the amount of two.

A copy of the Two Month Notice to End Tenancy for Landlord's Use of Property, dated October 30, 2021, is submitted as evidence and indicates an effective date of December 31, 2021. It states the purchaser or a close family member will occupy the rental unit.

The tenant testified that with the pandemic and time of year, it was very difficult to find a suitable place for the same rent, so he asked the landlord for more time. The tenant testified that on November 29 the landlord said he would pay the tenant 4 months compensation if the tenant vacated by the end of 2021, and that the tenant accepted the offer: the tenant did not have to pay rent for November or December 2021, and the landlord would pay the tenant the equivalent of two months' rent. The tenant said he found a place for \$2,300.00, much higher than the \$1,350.00 he had been paying, and vacated the rental unit on December 28, 2021.

The tenant testified that the landlord said he would pay the tenant the two months' compensation and the security deposit when the tenant vacated the unit and handed over the keys. The tenant testified that when they were vacating the unit on December

28, 2021, the landlord's agents demanded the keys and fob, and did not give the tenant any money. The tenant called the landlord, who said that he would e-transfer the tenant the money after the tenant gave the agents the keys and fobs.

The tenant testified the landlord never sent the money, the tenant called and emailed the landlord, but the landlord did not respond.

The tenant seeks \$2,700.00 in compensation, the amount equal to two months' rent under the tenancy agreement, and \$675.00 for the security deposit.

The tenant testified that no move-in inspection was done at the beginning of the tenancy, no move-out inspection was completed, and he did not authorize the landlord to keep any of the security deposit.

The tenant testified that he served the landlord with his forwarding address on December 29, 2021 by email and registered mail to the landlord's address on the tenancy agreement, and provided a tracking number as recorded on the cover page.

### Analysis

*Claim for compensation because the landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose*

Section 51(1) of the Act states that 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.

Section 51(2) of the Act states:

(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 the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49(6)(a), has been 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 testified that he and the landlord agreed that the tenant would not be required to pay rent for November or December 2021. Therefore, I find the tenant has received from the landlord the required amount equivalent of one month's rent payable under the tenancy agreement, pursuant to section 51(1) of the Act, in addition to having received the equivalent of a second month's rent.

The tenant testified that given his agreement with the landlord that the tenant would receive the equivalent of 4 months' rent if he vacated by the end of 2021, the landlord still owes him the equivalent of 2 months' rent.

As no part of the Act contemplates the agreement for additional compensation between the parties, and the tenant has not provided evidence that the landlord has not used the rental unit for the stated purpose, I dismiss the tenant's application.

#### *Claim for the security deposit*

Section 38(1) states:

**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 38(6) states:

- (6) If a landlord does not comply with subsection (1), the landlord
  - (a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The tenant has provided affirmed testimony and documentary evidence that he served the landlord with his forwarding address in writing on December 29, 2021 by email and registered mail. I deem the tenant's forwarding address received by the landlord on January 3, 2022, pursuant to section 90 of the Act.

As the landlord has not repaid or made a claim against the security deposit within 15 days of receiving the tenant's forwarding address in writing, I find the landlord is required to pay the tenant double the amount of the \$675.00 security deposit: \$1,350.00.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is partially successful in his application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

The tenant is entitled to a monetary order in the amount of \$1,450.00, comprising \$1,350.00 for the doubled security deposit and \$100.00 for the filing fee.

### Conclusion

The tenant is granted a monetary order for \$1,450.00. The monetary order must be served on the landlord. The monetary 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: October 05, 2022

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Residential Tenancy Branch