



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNETC, FFT**

Introduction

This hearing dealt with an application by the tenants 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 under section 51(2) and 67.
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Reimbursement of the filing fee pursuant to section 72.

BR and OR attended for all tenants. They explained the tenants are a family of a mother (MR) and two adult children (BR and OR). The hearing process was explained. The tenants had opportunity to provide affirmed testimony, present evidence and make submissions. The tenants called the witness AP who provided affirmed testimony.

The tenants are referenced in the singular.

Preliminary issues are addressed.

1. Preliminary Issue: Attendance of Landlord and Service

The landlord did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional sixty 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 tenant was provided.

The tenant provided affirmed testimony that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent to the landlord's residential address on March 13, 2020. Under section 90 of the Act, the documents are deemed received by the landlord five days later, that is, on March 18, 2022.

The tenant submitted the mailing receipt as evidence which included the Canada Post Tracking Number.

Pursuant to the tenant's evidence and sections 89 and 90, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on March 18, 2022.

2. Preliminary Issue – Recording

At the start of the hearing, I informed the tenant that recording of the hearing is prohibited under the Rules of Procedure. The tenant confirmed they were not recording the hearing.

3. Preliminary Issue – Tenant's Copy of Decision

The tenant confirmed the email address to which the Decision and any Order will be sent.

4. *Preliminary Issue – Amendment*

The tenant requested an amendment to the claim to add a request for a return of the security deposit which they provided at the beginning of the tenancy of \$1,800.00. The tenant claimed entitlement to a doubling of the security deposit.

Section 64(3)(c) and Rule 4 of the *Rules of Procedure* allow for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served.

In consideration of the evidence filed and the testimony of the tenant, further to *Act* and *Rules of Procedure*, I find the landlord could reasonably have anticipated that the tenant would claim a monetary order for the return of the security deposit. I find the amendment is not prejudicial to either party. I accordingly allow the tenant to amend the application as sought.

Issue(s) to be Decided

1. Is the tenant entitled to a Monetary Order for damages and one month's rent as compensation?
2. Is the tenant entitled to a doubling of the security deposit?
3. Is the tenant entitled to reimbursement of the filing fee?

Background and Evidence

Overview

The tenant provided uncontradicted evidence as the landlord did not attend the hearing. The tenant submitted substantial documentary evidence and testimony in a 1-hour hearing. They submitted a dated chronology with reference to supporting texts and phone calls between the parties. The tenant called the

witness AJ. Not all this evidence is referenced. Only key, admissible and relevant facts and my findings are referenced in my Decision.

The tenant claimed compensation under three headings.

First, the tenant claimed entitlement to rent of one month as compensation as the landlord requested the tenant to vacate the unit on sale on the building. The tenant received compensation for two weeks, so a balance of two weeks remains owing of \$900.00.

Secondly, the tenant requested compensation for a living accommodation expense of \$2,490.00 as the landlord entered into a new tenancy agreement with the tenant then terminated the agreement without notice.

Thirdly, the tenant claimed the landlord returned the security deposit of \$1,800.00 when they are entitled to a doubling because of the failure of the landlord to carry out a condition inspection upon moving out and to return the deposit as required.

The tenant also requested reimbursement of the filing fee.

Background of Tenancy

The tenant submitted a copy of the tenancy agreement. They testified to the background of the tenancy as follows:

INFORMATION	DETAILS
Type of Tenancy	Month-to-month
Beginning Date	January 1, 2020
Fixed Term End Date	December 30, 2020, then month-to-month
Vacancy Date	February 12, 2022

Rent payable on first of month	\$1,800.00
Security deposit	\$1,800.00 (returned on February 17, 2022)
Arrears of Rent	None. Paid rent to February 1, 2022
Condition Inspection Report on moving in	Yes
Condition Inspection Report on moving out	No

Each of the tenant's claims are addressed.

Claim for One Month's Rent as Compensation

The tenant claimed they are entitled to compensation of one month's rent as the landlord sold the building in which the unit is located and asked them to move out by February 15, 2022. The landlord provided the first two weeks' rent for February 2022 as compensation. The tenant claimed he owed them the remaining two weeks' rent as compensation in the amount of \$900.00.

The tenant acknowledged the landlord did not issue a Notice to End Tenancy under the Act.

In November 2021, the landlord informed them by text of the pending sale of the home in which the unit was located. The sale was scheduled for February 2022. The landlord asked them to vacate by February 12, 2022 as the request of the new owner. The tenant agreed in a texted reply.

In their written submissions, the tenant stated:

[The landlord} informed us through text in late November 2021 that the purchase will be final on February 15, 2022. In this text, he told us that the new owner wishes to reclaim the basement as living space. He verbally told us that we need to move out by then.

However, he never issued us a Notice to End Tenancy (Form #RTB-32). At the time, we were not aware that this meant tenancy could not legally come to an end.

The tenant testified they did not know at the time the landlord was required to issue a Notice under the Act.

Claim for Compensation

The tenant claimed compensation for breach of a new tenancy agreement.

On November 22, 2021, shortly after asking the tenants to move out on February 12, 2022, the landlord called the tenant to say they could rent the basement suite in his new house starting March 5, 2022. The tenant agreed.

The landlord verbally confirmed this new agreement (“the new tenancy” or “the new unit”) several times with all three tenants. The witness AJ testified that she was present during a call between all the parties which was on speaker mode; she confirmed the tenant and landlord all agreed to the new tenancy agreement. The tenant testified they were grateful for the new tenancy, so they did not have to search in a challenging rental market. The rental amount was not discussed and the tenant assumed it would be similar to the rental of the current unit.

The landlord later requested the tenant move out of the unit earlier, on February 6, 2022. The tenant agreed.

The landlord asked the tenant to find a place to stay from February 6, 2022 to March 6, 2022, the revised starting date for the new tenancy, as the tenant would

be between tenancies then. The landlord explained he planned to carry out renovations to the new unit before the tenant moved in. Accordingly, on December 5, 2021, the tenant booked an Airbnb for that period and notified the landlord the same day by text, a copy of which was submitted.

I booked a place from Feb 6 to March 6. If renovation still not done, I will book hotel for 1 more week.

The landlord replied by text, a copy of which was submitted:

OK thanks.

I will try to finish by March 6.

Accordingly, the tenant rented an Airbnb from February 6, 2022, to March 6, 2022, at a cost of \$2,490.00. A copy of the Airbnb receipt was submitted. The tenant testified they sent a copy to the landlord.

On February 5, 2022, the tenant sent the landlord a text exchange, a copy of which was submitted, in which the tenant confirmed they had a moving truck booked for February 12, 2022.

On February 5, 2022, the landlord invited the tenant to view the suite of the new tenancy. All tenants and the witness AP went to the landlord's home and viewed the new unit. About 15 minutes after the viewing and shortly after they left, the landlord sent a text message to the tenant saying he changed his mind. He now wished to occupy the whole living space and the tenant would not be moving in. The text stated:

I will be not renovating house so I will keep all place my wife said we have lots off stuff it not going to fit upstairs.

Sorry for this.

The landlord then phoned the tenant and verbally promised to pay for the tenant's Airbnb expenses, saying it was "my fault, and you are not going to use it". The witness AJ testified she was present during discussions among the tenants, overheard many conversations by phone between the parties, and therefore was knowledgeable about all details of the evolving situation. AJ confirmed the landlord verbally promised to rent the new unit to the tenant and, when he backed out, to reimburse the tenant for the Airbnb expenses.

The tenant sent the landlord a copy of the invoice on February 7, 2022.

The tenant testified they were alarmed and surprised at the cancellation of the new tenancy and immediately started looking for new accommodations. They explained the rental market was tight and expensive. They were concerned about finding a place to live. They subsequently located accommodations which they moved into on February 12, 2022, the day they moved out of the unit.

In their written submissions, the tenant stated:

This put us in a very difficult situation, where we now had less than 10 days to find a new place to live before the new owner wished to occupy the whole house. With the rent market being scarce, we decided to prioritize finding a place and moving straight in. Luckily, we were able to secure and start a new tenancy elsewhere beginning February 12. We moved out fully on February 14, 2022 – ensuring cleanliness of the basement suite.

Since we were able to secure a living space, the AirBnb that we had booked per [the landlord's] request was no longer something we could use. As per AirBnb's policy, we were also unable to get a refund.

The tenant never occupied the Airbnb and were unable to receive a refund. The tenant requested compensation from the landlord.

Claim for return of security deposit

The tenant stated that no condition inspection was conducted on the unit on the day they vacated, February 12, 2022.

On February 15, 2022, the provided their forwarding address to the landlord. That day, the landlord reimbursed the security deposit of \$1,800.00.

The tenant claimed a doubling of the security deposit.

Application fee

The tenant claimed reimbursement of the fiing fee of \$100.00.

Analysis

Each of the tenant's claims are addressed.

Credibility

The parties primarily communicated verbally with some confirming texts. The texts supported the tenant's testimony of the history of the ending of one tenancy, and the agreement to enter another, both with the same landlord.

Although the landlord was not present at the hearing to contradict the tenant's account, I have carefully considered the tenant's evidence including the witness' testimony and the related texts.

The tenant's testimony was straightforward and matter of fact. The written submissions included a dated and descriptive list of all supporting texts as well as copies of the texts.

In reaching my findings regarding the facts and the acceptance of the tenant's evidence, I have considered the useful of *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth.

The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions.

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I have carefully reviewed the evidence. I have concluded the tenant's version of events is credible, reasonable in the circumstances and carried the conviction of truth. I find the tenant's version of events to be most in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

Accordingly, I accept the tenant's testimony in all aspects, finding it was credible and supported by documentary evidence.

Four-part Test

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the other party failed to comply with the Act, regulations, or the

tenancy agreement?

2. If yes, did the loss or damage result from the non-compliance?
3. Has the claiming party proven the amount or value of their damage or loss?
4. Has the claiming party done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

. . .

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Standard of Proof

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state that 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.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to the tenant to prove their claims.

The tenant's claims are addressed.

1. 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. They are considered to have vacated under their own volition. 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.

2. Tenant's Claim Compensation - Living Accommodation

Based on the credible evidence of the tenant, I find as follows. The tenant rented non-refundable accommodation from Airbnb for the period February 6, 2022, to March 6, 2022, at a cost of \$2,490.00. The reason for this rental was because the parties agreed the tenant would move out of the unit on February 6, 2022 and move into the landlord's new accommodation on March 6, 2022. Unexpectedly, the landlord withdrew from the agreement on February 5, 2022 without warning. Because of a difficult rental market, the tenant started looking right away for a new place to live, found one, and moved in February 12, 2022, never moving into the Airbnb.

I find the tenant have complied with all four parts of the 4-part test and are entitled to an award for \$2,490.00 as requested.

Each part of the 4-part test is referenced.

1. Has the other party failed to comply with the Act, regulations, or the tenancy agreement?

I find as follows. The parties had an enforceable verbal monthly tenancy agreement effective November 22, 2022 for the new unit in the landlord's house. The occupation was scheduled to begin on March 6, 2022. Based on this agreement, the tenant agreed to vacate their current unit on February 12, 2022 to accommodate the landlord.. As the landlord said he was renovating the new unit and it would be available March 6, 2022, the tenant rented temporary accommodation and incurred an expense for which they are entitled to compensation.

The Act provides that a tenancy may be a verbal agreement:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

The Act provides that the tenant has a right to possession of a rental unit under the tenancy agreement, which is deemed to include certain terms.

This right of possession was extinguished by the landlord without notice on February 5, 2022 when the landlord suddenly cancelled the agreement.

The landlord's obligations take effect when the tenancy agreement is entered into, whether or not the tenant occupies the unit:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In summary, I find the parties had a tenancy agreement for the new unit. I find the tenant has met the burden of proof that the landlord failed to comply with his obligations under the rental agreement and denied the tenant the right of possession.

2. If yes, did the loss or damage result from the non-compliance?

As a result of the landlord's sudden withdrawal from the agreement, the tenant incurred a loss, that is, the non-refundable interim, temporary accommodation from February 6, 2022 to March 5, 2022 in the amount of \$2,490.00.

3. Has the claiming party proven the amount or value of their damage or loss?

The tenant has established the loss of \$2,490.00 and submitted a receipt in this amount.

4. Has the claiming party done whatever is reasonable to minimize the damage or loss?

I find the tenant took all reasonable steps to minimize the loss but were unable to obtain any refund on the Airbnb expense by cancelling the day before the start date. The tenant acted prudently in a difficult rental market in seeking alternate accommodation right away and moving as soon as possible. In the circumstances, I find it reasonable that the tenant did not move into the Airbnb.

As I find the tenant has met the burden of proof under all parts of the 4-part test, I grant the tenant a Monetary Order in the amount of \$2,490.00.

3. Tenant's Claim - Security Deposit

I find the tenant has failed to establish the first step of the 4-part test. That is, I find the landlord has not breached the Act or the Agreement and has returned the security deposit as required. The landlord returned the security deposit in full the same day he received the tenant's forwarding address.

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.

I therefore dismiss this aspect of the tenant's claim without leave to reapply.

Filing fee

As the tenant has been successful in this application, I grant an award in the amount of \$100.00 for return of the filing fee pursuant to section 72.

Summary of Award

I grant a Monetary Order OF **\$2,590.00** to the tenant as follows:

ITEM	AMOUNT
Compensation	\$2,490.00.
Reimbursement of filing fee	\$100.00
TOTAL MONETARY ORDER	\$2,590.00

Conclusion

I grant a Monetary Order to the tenant in the amount of **\$2,590.00**.

This Monetary Order must be served on the landlord. This Monetary Order may be filed and enforced in the Courts of the Province of British Columbia.

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 27, 2022

Residential Tenancy Branch