



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1285097 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNETC

Introduction

This hearing dealt with the tenant's application, filed on September 26, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$10,826.00 for compensation because the landlord ended the tenancy and has not complied with the *Act* or used the rental unit for the stated purpose, pursuant to section 51; and
- authorization to obtain a return of double the amount of the security deposit of \$8,000.00, totalling \$16,000.00, pursuant to section 38.

The landlord's two agents, landlord AD ("landlord's agent") and "landlord SE," the tenant, and the tenant's agent attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 55 minutes from 1:30 p.m. to 2:25 p.m.

The tenant intended to call a witness, who was excluded from the outset of this hearing. The witness did not testify at this hearing. I determined that the proposed testimony of the tenant's witness was irrelevant and unnecessary for this hearing, as the tenant's agent confirmed it was hearsay and related to the section 51 application only, which was dismissed preliminarily, as noted below.

All hearing participants confirmed their names and spelling. The landlord's agent and the tenant provided email addresses for me to send this decision to both parties after the hearing.

The landlord's agent confirmed that he was the building manager, and that landlord SE was his assistant, but she would not testify at this hearing. He confirmed that he had permission to represent the landlord named in this application ("landlord"), at this

hearing. He confirmed the landlord's legal name, stated that the landlord owns the rental unit, and provided the rental unit address. He identified himself as the primary speaker for the landlord at this hearing.

The tenant confirmed that her agent had permission to represent her at this hearing and identified him as the primary speaker. The tenant's agent stated that he is the husband of the tenant.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed both parties that I could not provide legal advice to them, and they could hire a lawyer for same. They had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Both parties were given an opportunity to settle and declined to do so.

I cautioned the tenant and her agent that if I dismissed the tenant's application without leave to reapply, the tenant would receive \$0. The tenant's agent affirmed that the tenant was prepared for the above consequence if that was my decision.

I cautioned the landlord's two agents that if I granted the tenant's application, that I could issue a monetary order against the landlord, to pay the tenant up to double the value of her security deposit, totalling \$16,000.00. The landlord's agent affirmed that the landlord was prepared for the above consequence if that was my decision.

Preliminary Issue – Service of Documents and Amendments

The landlord's agent confirmed receipt of the tenant's application for notice of dispute resolution proceeding. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's notice of dispute resolution proceeding.

The tenant's agent stated that he served the tenant's amendment and evidence package to the landlord on October 24, 2022, by way of registered mail, and on October 28, 2022, by way of email. The landlord's agent confirmed receipt of the email on October 30, 2022, and the mail on October 31, 2022. He said that the tenant's evidence was late and should not be considered at this hearing. The tenant's agent stated that the evidence was not late, and it was not his fault that the landlord delayed picking up the mail. He said that the amendment only reflected what the tenant is entitled to under the *Act*.

I notified both parties that the registered mail was deemed received by the landlord on October 29, 2022, five days after its mailing, as per section 90 of the *Act*. The email was deemed received on October 31, 2022, three days after emailing, as per section 44 of the *Residential Tenancy Regulation*.

I informed both parties that I would not consider the tenant's evidence at this hearing or in my decision because it was received by the landlord late, less than 14 days prior to this hearing, not including the service or hearing dates, contrary to Rule 3.14 of the RTB *Rules*. I notified them that I also received the tenant's evidence late, as it was uploaded to the RTB online dispute access site on October 27 and 28, 2022, less than 14 days prior to this hearing.

I find that the landlord did not have sufficient time to review or respond to the tenant's evidence. I find that the tenant had ample time to serve her evidence in a timely manner, as she filed this application on September 26, 2022, and this hearing occurred on November 11, 2022, over 1.5 months later. I find that I was not required to consider the tenant's evidence in any event, as the section 51 claim was dismissed preliminarily as noted below, and both parties agreed on the facts regarding the security deposit claim.

I considered the tenant's amendment to the monetary amounts for double the security deposit, one-month free rent, and prorated rent return based on the correct amount of rent at the end of the tenancy. I am required to determine the statutory entitlement for monetary compensation to the tenant, pursuant to sections 38 and 51 of the *Act*, regardless of whether the tenant applied for or amended her application for same.

The tenant's agent stated that he did not receive the landlord's evidence. The landlord's agent stated that he provided photographs of damages to the rental unit for the security deposit claim. I informed both parties that I would not consider the landlord's evidence at this hearing or in my decision, as the tenant did not receive it or

review it, and it was irrelevant to the tenant's security deposit claim. I find that I was not required to consider the landlord's evidence in any event, as the section 51 claim was dismissed preliminarily as noted below, and both parties agreed on the facts regarding the security deposit claim.

The landlord's agent and the tenant's agent both affirmed that they wanted to proceed with this hearing, despite the fact that I would not consider their documentary evidence at this hearing.

At the outset of this hearing, the tenant's agent asked for recovery of the \$100.00 filing fee. I informed him that the tenant did not apply for it in this application, so she would not receive it. He insisted that he checked off the box asking to recover the filing fee. I reviewed the online RTB dispute access site file and informed the tenant's agent that a notice of assessment was provided, and the tenant received a fee waiver, since the tenant's agent applied for same in his own name, and no filing fee was paid. He then said that the tenant provided the notice of assessment, and he did not know about the fee waiver. He claimed that the information was irrelevant, and it was not an important issue, since it was only \$100.00, so if the tenant did not pay for it then she did not need it returned.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the rental unit street address. The landlord's agent consented to same. Neither the tenant, nor her agent, objected to same. I find no prejudice to either party in making this amendment.

Preliminary Issue – Dismissal of Tenant's Application for Section 51 Compensation

At the outset of this hearing, the tenant's agent confirmed that the tenant filed this application for 1 month free rent compensation of \$8,120.00 and return of prorated rent for providing 10 days notice to move out early in August 2022 of \$2,706.00, totalling \$10,826.00, both related to a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice").

The landlord's agent and the tenant's agent both agreed that the tenant did not receive a 2 Month Notice in the approved RTB form from the landlord. The tenant's agent said that there was a verbal notice given over the phone to end this tenancy.

Sections 49, 50, 51, and 52 of the *Act*, state in part (my emphasis added):

- 49 (2) Subject to section 51 [tenant's compensation: section 49 notice], a **landlord may end a tenancy**
(a) for a purpose referred to in subsection (3), (4), (5) or (6) **by giving notice to end the tenancy** effective on a date that must be
(i) not earlier than **2 months** after the date the tenant receives the notice,
...
(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy].
- 50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify] or the tenant receives a director's order ending a periodic tenancy under section 49.2 [director's orders: renovations or repairs], the tenant may end the tenancy early by
(a) 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 or director's order, and
(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice...
- 51 (1) 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.
(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
(1.2) If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid...
- 52 **In order to be effective, a notice to end a tenancy must be in writing and must**
(e) when given by a landlord, be in the approved form.

Both parties provided undisputed, affirmed testimony at this hearing, that the tenant did not receive a 2 Month Notice in the approved RTB form from the landlord.

Accordingly, the tenant's application for a monetary order, totalling \$10,826.00, related to a 2 Month Notice and section 51 of the *Act*, is dismissed without leave to reapply.

I verbally informed both parties of my decision during this hearing. Both parties confirmed their understanding of same.

The tenant's agent was upset and argumentative throughout this hearing. He became angry when I dismissed the above claim. I repeatedly stated my decision and the reasons for same, quoting the above sections of the *Act*, and he repeatedly argued with me. He stated that he would review and appeal my decision because he did not agree with it.

Issue to be Decided

Is the tenant entitled to obtain a return of double the amount of her security deposit?

Background and Evidence

While I have turned my mind to the testimony of both parties at this hearing, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The landlord's agent and the tenant's agent agreed to the following facts. This tenancy began on February 11, 2021. Monthly rent in the amount of \$8,120.00 was payable on the first day of each month. A security deposit of \$8,000.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. A move-out condition inspection report was not completed for this tenancy. The tenant was not provided with two opportunities from the landlord, to conduct a move-out condition inspection. The landlord received a written forwarding address on August 22, 2022, from the tenant, by way of email. The landlord did not file an RTB application for dispute resolution to retain any amount from the tenant's deposit. The landlord did not have the tenant's written permission to keep any part of the tenant's deposit.

The tenant's agent confirmed that the tenant seeks the return of double the amount of her security deposit of \$8,000.00, totalling \$16,000.00.

The tenant's agent stated the following facts. This tenancy ended on August 20, 2022. The tenant returned the keys to the landlord on that date. No move-in condition inspection report was completed or signed with the landlord. The tenant's agent attended a move-in condition inspection with the landlord's agent, and both noticed there were problems in the rental unit, so a verbal agreement was made for a discount in rent to \$8,000.00 per month. The tenant "begged" the landlord to do a move-out condition inspection report, but none was completed. The landlord re-rented the unit to new tenants on September 1, 2022.

The landlord's agent stated the following facts. This tenancy ended on September 30, 2022. The building concierge rejected the return of the rental unit keys from the tenant, so she mailed it to the landlord. The landlord's agent does not know the date the keys were received or when the landlord took back possession of the rental unit. A move-in condition inspection report was completed and signed by the landlord and the tenant's ex-husband, HB, who is named on the parties' written tenancy agreement. No move-out condition inspection or report was completed because the tenant abandoned the rental unit and the landlord wanted to continue the tenancy. The landlord did not provide two opportunities to the tenant to complete a move-out condition inspection or report. The landlord sent an email to the tenant on September 30, 2022, stating that the landlord was keeping the tenant's security deposit for damages.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities, based on the testimony of both parties at this hearing.

The following facts are undisputed. The tenant provided a written forwarding address to on August 22, 2022, which was received by the landlord, by email. The landlord did not have the tenant's written permission to keep any amount from the security deposit. The landlord did not file an application at the RTB to keep any amount from the tenant's deposit.

The landlord did not return the tenant's deposit within 15 days of the end of the tenancy (whether it ended on August 20, 2022, as the tenant's agent claimed, or September 30, 2022, as the landlord's agent claimed) or the written forwarding address date of August 22, 2022. The landlord did not file an application at the RTB to claim against the deposit.

I find that the landlord's right to claim against the deposit for damages was extinguished for failure to complete a move-out condition inspection or report, provide a copy of the report to the tenant, or provide two opportunities to conduct a move-out condition inspection to the tenant, with one using the required RTB approved form, all contrary to section 36 of the *Act*.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the amount of her security deposit of \$8,000.00, totalling \$16,000.00. There is no interest payable on the deposit during the period of this tenancy.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$16,000.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenant's application is dismissed without leave to reapply.

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: November 10, 2022

Residential Tenancy Branch