



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BLUE SKIES PROPERTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MNECT FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlords did not. I waited until 1:43 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. The tenant confirmed that they understood.

The tenant provided sworn, undisputed testimony that they had served the landlords with this application for dispute resolution hearing package ("Application") and evidence by way of Registered Mail on March 25, 2022. The tenant provided proof of service in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlords deemed served with the tenant's application and evidence on March 30, 2022, five days after mailing. The landlords did not submit any written evidence for this hearing.

Issues(s) to be Decided

Is the tenant entitled to the return of their security deposit?

Is the tenant entitled to a monetary award for the landlords' failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on April 1, 2017, and ended on October 31, 2021 after the tenant was served with a 2 Month Notice for Landlord's Use on September 1, 2021. Monthly rent was set at \$2,400.00, payable on the first day of the month. The landlords had collected a security deposit in the amount of \$1,200.00, which the landlord still holds.

The tenant filed this application as the landlords had sold the home despite the fact that they had served the tenant with a 2 Month Notice for Landlord's Use for the following reason: "The landlord is a family corporation and a person owning voting shares in the corporation, or close family member of that person, intends in good faith to occupy the rental unit".

The tenant testified that the home was listed in sale in March 2022, and sold shortly thereafter in April 2022. The tenant submitted a copy of the real estate listing for the home. The tenant testified that the landlords never occupied the property as required by the 2 Month Notice. The tenant is seeking the required compensation for the landlords' failure to occupy the home as required.

The tenant is also seeking the return of their security deposit. The tenant testified that they had originally emailed the landlords their forwarding address on November 17, 2021, but followed up by sending their forwarding address by registered mail on March 18, 2022. The tenant testified that they had never given permission for the landlord to retain their deposit, and the landlord has not returned any portion of their deposit to them.

Analysis

Section 38(1) of the *Act* requires that landlords, within 15 days of the end of the tenancy or the date on which the landlord receive the tenants' forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlords may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlords did not return the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. There is no record that the landlords had applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave sworn testimony that the landlords had not obtained their written authorization at the end of the tenancy to retain any portion of the security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenants' forwarding address is received in writing; ...*
- *whether or not the landlord may have a valid monetary claim.*

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit as the landlords failed to return the deposit.

The tenant also filed for compensation related to the landlords' 2 Month Notice.

Section 51(2) of the *Act* reads in part as follows:

51(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

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Policy Guideline #50 states the following about “Extenuating Circumstances” in the context of compensation for ending a tenancy under section 49 of the Act.

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.*
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.*

The following are probably not extenuating circumstances:

- *A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

I find the tenant provided undisputed evidence to support that the landlords had sold the home instead of occupying it. I find that the landlord did not provide an explanation that falls under the definition of extenuating circumstance as set out in the *Act* and *Policy Guidelines*. Accordingly, I find that the tenant is entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the landlords' noncompliance. I issue a monetary award to the tenant in the amount of \$28,800.00 (12 x \$2,400.00).

As the tenant was successful with their claims, I find that they are entitled to recover the filing fee for this application.

Conclusion

I issue a Monetary Order in the tenant's favour as set out in the table below:

Item	Amount
Return of Security Deposit	\$1,200.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1,200.00
Compensation pursuant to section 51(2) of the <i>Act</i>	28,800.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$31,300.00

The tenant is provided with this Order in the above terms and the landlords must be served with a copy of this Order as soon as possible. Should the landlords 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.

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: December 14, 2022