Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD MNETC**

This hearing was convened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Tenant applied for:

- an order for the return of the Tenant's security and/or pet damage deposit(s) pursuant to section 38; and
- monetary compensation from the Landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 51.2.

The original hearing of the Application was held on October 11, 2022 ("Original Hearing"). There was insufficient time for the parties to complete their testimony and rebuttals. As such, pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* ("RoP"), I adjourned the hearing and issued a decision dated October 14, 2022 and corrected on October 17, 2022 ("Interim Decision"). The Interim Decision, and Notices of Dispute Resolution Proceeding for this adjourned hearing ("Adjourned NDRP"), scheduled for November 29, 2022 at 1:30 pm ("Adjourned Hearing"), were served on the parties by the Residential Tenancy Branch ("RTB").

The Landlord, the Tenant and the Tenant's advocate ("GS") attended the Original Hearing and the Adjourned Hearing. They were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. A witnesses ("TE") appeared at the Adjourned Hearing to provide affirmed testimony on behalf of the Tenant. The Landlord's son ("GH") was called during the Adjourned Hearing to provide affirmed testimony on behalf of the Landlord.

The Landlord stated she served her evidence on the Tenant by registered mail on November 15, 2022. The Landlord provided the Canada Post tracking number for service of her evidence on the Tenant to corroborate her testimony. The Tenant acknowledged she received the Landlord's evidence by registered mail. As such, I find

the Landlord served her evidence on the Tenant pursuant to the provisions of section 88 of the Act.

Preliminary Matter – Service of Notice of Dispute Resolution Proceeding and Evidence

At the Original Hearing, GS stated he served the Notice of Dispute Resolution Proceeding ("NDRP") on the Landlord in-person on March 15, 2022. GS admitted there was no witness present at the time he purportedly served the NDRP on the Landlord. The Landlord denied GS served her with the NDRP in-person. However, the Landlord stated GS served her with some evidence on September 27, 2022. GS admitted he served evidence on the Landlord in-person on or about September 27, 2022. The Landlord stated she became aware there was a hearing when she received an email from the RBT stating the deadline for her to submit evidence was approaching. The Landlord stated she then phoned the RTB to inquire about the email she received and was told the Tenant made the Application. The Landlord stated she received a courtesy copy of the NDRP from the RTB and was fully prepared for the hearing.

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
b) the Respondent Instructions for Dispute Resolution;
c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

See Rule 10 for documents that must be served with the Notice of Dispute Resolution Proceeding Package for an Expedited Hearing and the timeframe for doing so.

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

I find, on a balance of probabilities, that the NDRP was not served on the Landlord in accordance with the provisions of Rule 3.1. I also that the Tenant did not serve her evidence on the Landlord not less than 14 days before the hearing as required by Rule 3.14. Pursuant to my Interim Decision, the Tenant was ordered to re-serve her evidence on the Landlord at least seven days before the Adjourned Hearing. GS stated the Tenant's evidence was served on the Landlord by placing it in a conspicuous place in front of the Landlord's door on October 20, 2022. The Landlord acknowledged she received the Tenant's evidence package on October 21, 2022. As such, I find the Tenant's evidence package was served on the Landlord pursuant to section 88 of the Act.

Preliminary Matter – Reduction of Monetary Claim

At the Adjourned Hearing, the Tenant stated she was seeking $1,500.00 from the Landlord for failure of the Landlord to return the security deposit to her. When I asked how she calculated the $1,500.00, the Tenant stated it represented double the rent of $700.00 plus the filing fee of $100.00 for the Application.

Rule 4.2 of the RoP states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

At the hearing, I was inclined to amend the Application to reduce the Tenant's claim for the return of the security deposit by $100.00 and to add a claim for $100.00 for recovery of the filing fee from the Landlord. However, after the hearing, I reviewed the records of the RTB and found the $100.00 filing fee for the Application was waived by the RTB. As such, the Tenant is not entitled to make a claim against the Landlord for reimbursement of the filing fee. Based on the foregoing, I order the Application to be amended to reduce the Tenant's claim for the return of the security deposit from $1,500.00 to $1,400.00.

Preliminary Matter – Attendance of TE at Hearing

At the outset of the Original Hearing and Adjourned Hearing, I stated I had to identify who was on the line. I then asked the Tenant whether there was anyone present with her on the line or in the room with her. The Tenant stated GS was present and would be acting as her advocate. I asked her if there was anyone else in the room or on the line with her and GS and she stated there was no one else. At the outset of the Original Hearing and Adjourned Hearing, I also asked the Landlord whether there was anyone on the line or in the room with her and she stated there was no one with her. I then asked the parties to let me know if anyone else joined them during the hearing. During the Adjourned Hearing, TE suddenly started speaking and I asked who she was. The Tenant stated TE was her witness. It became apparent that TE was present in the room with the Tenant and GS during the entire time that the Tenant and GS provided their testimony at the Adjourned Hearing. When TE provided her testimony, I found her testimony to be overly similar and tailored to the testimony already provided by the Tenant. As such, I find TE's testimony to be less than reliable and I have placed less weight on her testimony at the hearing.

Issues to be Decided

Is the Tenant entitled to:

- an order for the return of the Tenant's security and/or pet damage deposit(s)?
- monetary compensation from the Landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Tenant submitted into evidence part of the signed tenancy agreement and addendum dated September 26, 2022 between the Landlord and Tenant. The parties agreed the tenancy commenced on October 1, 2018, with a fixed term ending September 30, 2019, with rent of $1,400.00 payable on the 1st day of each month. The Tenant was required to pay a security deposit of $700.00 by October 1, 2018. The Landlord acknowledged she received the security deposit from the Tenant and that she was holding it in trust on behalf of the Tenant. As such, I find there was a tenancy between the Landlord and Tenant and that I have jurisdiction to hear the Application. During the hearing, the Tenant stated the rental unit has two bedrooms. The parties agreed the Tenant vacated the rental unit on July 31, 2021.

The Tenant submitted into evidence a copy of a Two Month Notice to End Tenancy for Landlord's Use dated May 26, 2021 ("1 Month Notice"). The 1 Month Notice stated the reason for ending the tenancy was a child of the landlord or the landlord's spouse will be occupying the rental unit.

The Tenant stated she served the Landlord with her forwarding address by email on August 14, 2021. The Landlord acknowledged she received the Tenant's email with the Tenant's forwarding address.

The Landlord stated a move-in condition inspection was performed with the Tenant. The Tenant denied an inspection was performed with her. The Landlord submitted a copy of the move-in condition inspection report that had the Tenant's name written at the bottom of it. The Tenant denied she signed the move-in condition inspection report. The Landlord admitted she did not think it was the Tenant's signature. The Landlord stated the inspection was performed over several days after the Tenant moved in because the ceiling and bathroom were being repaired. The Landlord acknowledged a move-out condition inspection was not performed by the parties.

The Landlord stated GH, her son, and his two boys moved in with her in the upper level of the residential property on October 11, 2020. The Landlord stated everything was packed and GH moved into the rental unit on July 1, 2021, immediately after the Tenant

vacated the rental unit, and he occupied the rental unit through to March 2022. The Landlord stated GH had access to the whole house as the rental unit was accessible through a door in the foyer to the rest of the house.

The Tenant stated she was seeking compensation equivalent to 12 months of rent on the basis the Landlord did not use the rental unit for the purposes stated in the 2 Month Notice. The Tenant stated TE saw the comings and goings from the residential property on a daily basis. The Tenant stated TE contacted her to let her know that GH did not move into the rental unit.

TE stated she lives down the street from the residential property and passes by the driveway of the residential unit everyday. TE stated the Landlord only has one vehicle and it is always parked in the driveway. TE stated there were no lights going on and off in the rental unit. TE stated GH did not occupy the rental unit at all and only the Landlord was living in the residential premises. TE stated that she and the Tenant sent a registered letter to GH's house and he signed for it and that the GH was living at that address. TE stated she and the Tenant had a copy of the documentation regarding that registered mailing to GH but the Tenant did not serve a copy of it on the Landlord, or submit it to the RTB, before the Original Hearing.

The Landlord stated none of the statements made by TE were correct. The Landlord stated TE was told by the RCMP to stay off the Landlord's residential property because she was caught looking into a downstairs' bedroom. The Landlord stated TE does not see the front of the Landlord's house or her garage . The Landlord stated GH used the front bedroom of the rental unit and TE cannot see into that room. The Landlord stated TE was looking into a bedroom in the rental unit that no one is comfortable using because TE is always looking into it. The Landlord stated the Tenant, when she was living in the rental unit, placed a sign in the window for that bedroom to block it from viewed from the outside. The Landlord stated she owns another house that GH had been living in, but that house was being renovated to turn it into business use and that during that time, GH was living with her and then occupying the rental unit. The Landlord submitted into evidence copies of receipts to show GH was paying rent to her while he was living upstairs and while he was occupying the rental unit.

GH stated he was living upstairs in the residential premises prior to moving into the rental unit. GH stated he, and his two sons, occupied the rental unit on August 1, 2021 to March 2022. GH stated he was using the front bedroom, living room and the kitchen to cook and was happy to have more space in the rental unit. GH stated he vacated the rental unit on March 8, 2022 and started to return to the other house owned by the

Landlord in March 2022 when most of the renovations to it were completed. GS cross-examined GH and pointed out the receipts submitted by the Landlord did not indicate the dates of occupancy on them. GS asked GH if the address on GH's driver's license had been changed or the driver could get fined if it was not changed within two weeks. GH stated he had been living at the other address for a long time, had a PO box and there was no need for him to change his address.

The Tenant stated she sent a registered mail package on November 26, 2022 to the other house owned by the Landlord to show GH was living at another address. GH again affirmed that he was occupying the rental unit and that, as he was renovating the other house, he would pick up mail that was sent to that address. The Tenant stated it was odd that GH and his two sons only occupied one bedroom in the rental unit when there was a second bedroom.

The Landlord stated the rental unit was more than 1400 square feet in size. The Landlord stated there was a large set of bunk beds in one end of the large living room of the rental unit that TE cannot see from outside.

Analysis

Pursuant to Rule 6.6 of the RoP, the standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the standard of proof.

1. Tenant's Claim for Return of Security Deposit

Sections 23(1), 24(1), 24(2), 35(1) through 35(5), 36(1), 36(2) and 38(1) through 38(8) of the Act state:

> 23(1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

(4) *The landlord must complete a condition inspection report in accordance with the regulations.*

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

24(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) *[2 opportunities for inspection]*, and

(b) the tenant has not participated on either occasion.

(2) *The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

35(1) *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

36(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, *the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

(a) does not comply with section 35 (2) [2 opportunities for inspection],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36(1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) *The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements]*.

(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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must repay a deposit

(a) in the same way as a document may be served under section 88 (c), (d) or (f) *[service of documents]*,

(b) by giving the deposit personally to the tenant, or

(c) by using any form of electronic

(i) payment to the tenant, or

(ii) transfer of funds to the tenant.

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

[emphasis in italics added]

The Landlord stated a move-in condition inspection was performed when the Tenant moved in. Although the Tenant's name appears on the bottom of the move-in condition inspection report, the Tenant denied she signed it. Regardless of whether the Tenant signed the move-in condition inspection report, the Landlord admitted that a move-out condition inspection was not performed with the Tenant. As such, the Landlord did not comply with the requirements of section 35(1) of the Act. Pursuant to section 36(2) of the Act, the right of the Landlord to claim against the security deposit for damages was extinguished as a result of her failure to comply with section 35(1) of the Act.

The Tenant stated she served the Landlord with her forwarding address on August 14, 2021. The Tenant did not provide any evidence that the Landlord had consented to service of documents by email. As such, the Tenant did not serve her forwarding address on the Landlord by a method specified by section 88 of the Act. However, the Landlord admitted she received the Tenant's email, with her forwarding address, on August 14, 2021. As such, I find the Landlord was sufficiently served with the Tenant's forwarding address on August 14, 2021 pursuant to the provisions of section 71(2)(b) of the Act. I find the Tenant provided her forwarding address to the Landlord less than one year after the tenancy ended as required by section 39 of the Act..

Pursuant to section 38(1) of the Act, the Landlord had until August 30, 2021, being the next business day after the 15-day period after receipt of the Tenant's forwarding address, to either return the deposit in full, or alternatively, make an application for dispute resolution to make a claim against the security deposit. The Landlord did not make an application for dispute resolution and the Landlord admitted that she was still holding the security deposit. As such, the Landlord did not comply with the provisions of section 38(1) of the Act. Pursuant to section 38(6) of the Act, the Landlord is required to pay the Tenant double the amount of the security deposit. Based on the foregoing, I order the Landlord to pay the Tenant $1,400.00, being double the amount of the monthly rent of $700.00.

2. Tenant's Claim for Compensation for Landlord's Use of Property

The Tenant seeks $17,550.00 compensation pursuant to section 51(2) of the Act on the basis that the Landlord did not use the rental unit for the purpose stated in the 2 Month Notice.

Subsections 51(2) and 51(3) of the Act state:

> 51(2) Subject to subsection (3), the landlord…must pay the tenant…an amount thatis the equivalent of 12 times the monthly rent payable under the tenancy agreement *if the landlord…does not establish that*
>
> (a) *the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notic*e, 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*.

(3) The director may excuse the landlord…from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord…from

(4)

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

(b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration,beginning within a reasonable period after the effective date of the notice.

[emphasis in italics added]

Residential Tenancy Policy Guideline 50 ("PG 50") addresses the requirements for a landlord to pay compensation to a tenancy under the Act. PG 50 states in part:

Reasonable Period

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. […]

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. *For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances.* For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

Accomplishing the Purpose/Using the Rental Unit

Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.

> *Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy.* For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot convert the rental unit to a non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.
> […]
>
> *A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit, or a portion of the rental unit (see Blouin v. Stamp, 2011 BCSC 411), to a new tenant without occupying the rental unit for at least 6 months*

[emphasis in italics added]

The Landlord stated GH and his two boys moved in with her in the upper level of the residential property on October 11, 2020. The Landlord stated GH moved into the rental unit immediately after the Tenant vacated the rental unit on July 31, 2021. The Landlord stated GH had access to the whole house as the rental unit was accessible through a door in the foyer to the rest of the house. I find that the access of the Landlord's upper unit by GH and her two grandchildren was the result of the familial relationship between them and it is not relevant to my determination of whether the rental unit was used by GH and his two sons for the purposes of section 51(2) of the Act.

TE stated she lives down the street from the residential property and passes by the driveway of the residential unit everyday. TE stated the Landlord only has one vehicle and it is always parked in the driveway. TE stated there were no lights going on and off in the rental unit. TE stated she and the Tenant sent a registered letter to GH's house and he signed for it and that the GH was living at that address. The Tenant did not provide a copy of the registered mail information for this proceeding.

The Landlord stated TE was told by the RCMP to stay off the Landlord's residential property because she was caught looking into a downstairs' bedroom. The Landlord stated TE cannot see the front of the Landlord's house or her garage . The Landlord stated GH used the front bedroom of the rental unit and TE cannot see that room. The

Landlord stated she owns another house that GH was living in, but that house was being renovated to turn it into business use and that during that time, GH was living upstairs with her until the Tenant vacated the rental unit and started occupying the rental unit. The Landlord submitted into evidence copies of receipts to show GH was paying rent to her while he was living upstairs and while he was occupying the rental unit.

GH stated he was living upstairs in the residential premises prior to moving into the rental unit. GH stated he, and his two sons, moved into the rental unit on August 1, 2021. GH stated he was occupying the front bedroom and living room, using the kitchen to cook and he was happy to have more space. GH stated he vacated the rental unit on March 8, 2022 and returned to the other house owned by the Landlord when most of the renovations to it were completed. GS cross-examined GH and pointed out the receipts submitted by the Landlord did not indicate the dates of occupancy on them. As GS is the child of the Landlord, I find it irrelevant whether GS was or was not paying rent to the Landlord during the period he occupied the rental unit. GS asked GH if the address on GH's driver's license had been changed or the driver could get fined if it was not changed within two weeks. GH stated he had been living at the other address for a long time, had a PO box and there was no need for him to change his address. I find GH's explanation for why he had not changed his address as being reasonable in the circumstances as he was returning to the other house when the renovations to it were completed.

The Tenant stated she sent a registered mail package on November 26, 2022 to the other house owned by the Landlord to show GH was living at another address. GH again affirmed that he was occupying the rental unit and that, as he was renovating the other house, he would pick up mail that was sent to that address. Although the Tenant admitted he had not changed his address when he moved to the rental unit, I again find GH's explanation for why had he not changed his address as being reasonable as he was returning to the other house when the renovations to it were completed.

The Tenant stated she could not understand why GH was not using the second bedroom. The Landlord stated the rental unit was more than 1400 square feet in size. The Landlord stated there was a large set of bunk beds in one end of the large living room of the rental unit that TE cannot see from outside. The Landlord stated no one was comfortable using the other bedroom in the rental unit because TE is always looking into it. The Landlord stated the Tenant, when she was living in the rental unit, placed a sign in the window for the other bedroom so as to block it from persons looking into it from the outside.

I prefer the testimony of the Landlord and GH. The evidence of the Tenant, GS and TE were substantially based on speculation. Furthermore, the testimony of TE appeared to have been parroted from the Tenant's testimony given earlier in the hearing. I also note that there was no evidence presented that would suggest the Landlord had attempted to re-rent the rental unit or had placed the residential premises on the market for sale. Based on the foregoing, I find that the Landlord has satisfied her onus to show, on a balance of probabilities, that GH occupied the rental unit from August 1, 2021 through to March 2022 and occupied it for more than six months. As such, I find the rental unit was used for the purpose stated in the 2 Month Notice within a reasonable period after the effective date of the 2 Month Notice and that the rental unit was used for that purpose stated in the 2 Month Notice for 6 months duration. Accordingly, I find the Landlord is not required to pay the Tenant an amount that is equal to 12 times the monthly rent payable under the tenancy agreement. As such, I dismiss without leave to reapply, the Tenant's claim for compensation pursuant to section 51(2) of the Act.

Conclusion

I order the Landlord pay the Tenant $1,400.00 being an amount equal to two times the month rent of $700.00 per month.

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This monetary order must be served by the Tenant on the Landlord and may be enforced in the Small Claims Division of the Provincial 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 30, 2022

Residential Tenancy Branch