



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, MNETC, FFT

Introduction

This hearing was convened as a result of the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order of \$510.60 for the Tenants' monetary loss or money owed by the Landlord pursuant to section 67;
- recovery of the Tenants' security deposit and/or pet damage deposit in the amount of \$277.71 pursuant to section 38;
- compensation in the amount of \$12,000.00 due to the Landlord having ended the tenancy and not complied with the Act or used the rental unit for the stated purpose pursuant to sections 49 and 51; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord, the Landlord's agent MS, and the Tenants attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Change of Landlord

This application initially named Sutton Group as the landlord and respondent. The Tenants explained that they had been unsure where the Landlord lived. MS testified that she received the documents for this dispute from Sutton Group and gave them to the Landlord. MS stated that she used to work for Sutton Group a long time ago and confirmed that this file has nothing to do with them.

The parties agreed that MC is the landlord. By consent of the parties, I have amended this application pursuant to section 64(3)(c) of the Act to replace Sutton Group with MC as the landlord and respondent.

Preliminary Matter – Service of Dispute Resolution Documents

MS confirmed the Landlord had received a copy of the Tenants' notice of dispute resolution proceeding package and documentary evidence (collectively, the "NDRP Package"). I find the Landlord was sufficiently served with the NDRP Package pursuant to section 71(2)(c) of the Act.

The Tenants confirmed receipt of the Landlord's documentary evidence. I find the Tenants were served with the Landlord's documentary evidence in accordance with section 88 of the Act.

Issues to be Decided

1. Are the Tenants entitled to compensation of \$510.60 for monetary loss or money owed?
2. Are the Tenants entitled to recover the security deposit in the amount of \$277.71?
3. Are the Tenants entitled to compensation in the amount of \$12,000.00 due to the Landlord having ended the tenancy and not complied with the Act?
4. Are the Tenants entitled to recover the filing fee?

Background and Evidence

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

The rental unit is the lower suite of a house. The Tenants commenced their tenancy on January 15, 2018 with the former owner of the property. The Landlord purchased the property on April 1, 2021.

The Landlord issued the Two Month Notice on September 28, 2021 with an effective date of December 1, 2021. The Tenants moved out of the rental unit November 27, 2021. At the time that the tenancy ended, rent was \$1,000.00 per month.

Copies of the Two Month Notice have been submitted into evidence. This notice is signed by MS, and states that the rental unit will be occupied by the "landlord or the landlord's spouse".

The Tenants testified that after the Landlord purchased the property, the Landlord tried to increase the rent from \$1,000.00 to \$1,500.00, which the Tenants refused. The Tenants denied having told the realtor that they agreed to a \$100.00 rent increase at the time. The Tenants stated the Landlord tried to ask them to do more work around the property while trying to raise the rent.

According to the Tenants, the Landlord tried to put the hydro account in the Tenants' name, which the Tenants also refused. The Tenants stated that their power was cut on April 21, 2021, which the Tenants described as negligence on the Landlord's part.

The Tenants stated that the Landlord hired MS as a property manager in or around August 2021. The Tenants testified that the Landlord attempted to put the property up for sale in September 2021, and that they received the Two Month Notice near the end of that month. The Tenants stated that it felt like the Landlord was trying to get the Tenants out.

The Tenants explained that they used to pay their utilities every three months, and used an app which helped to split the utilities between the rental unit and the upper suite. The Tenants stated that for the July to September 2021 bill, the Landlord asked them to pay 100%, even though the Tenants had agreed to pay 25-30%. The Tenants testified that just before September 2021, the Landlord had renovations in the upper suite of the house. The Tenants stated that lights and appliances upstairs would be turned on, so the Tenants did not agree to pay 100% of the utility bill.

The Tenants confirmed that they had paid a \$500.00 security deposit which was not returned by the Landlord. The Tenants stated that they did not think it was fair for the Landlord to use their security deposit to cover the utility bill. The parties agreed that there was no move-in or move-out inspection and no condition inspection report. According to the Tenants' application, the Tenants provided their forwarding address to

MS on November 27, 2021 via text and by delivering a printed copy to MS's office. MS confirmed that she received the Tenants' forwarding address.

The Tenants stated that in January 2022, they were told by their neighbours that the Landlord was on the property after new years and hadn't been living in the rental unit, and that there were possible renovations going on. The Tenants stated that another neighbour had said the Landlord wasn't there overnight and that there was no furniture in the house. The Tenants submitted a copy of text messages from their neighbour dated January 5 and January 7.

The Tenants referred to a screenshot of a Kijiji listing dated February 23, 2022, which appears to list the property for sale. The Tenants testified that the photographs of the property in this listing were not from 2020 when the previous owner was putting up the property for sale. The Tenants stated that later when they tried to investigate, the listing was already taken down.

The Tenants referred to their monetary order worksheet to explain the amounts they sought. The Tenants stated that they want to recover moving expenses of \$510.60 because they would not have moved if not for how the Landlord had treated them. The Tenants stated that they don't believe the Landlord had the intention of moving into the rental unit at all. The Tenants stated that they were suffering harassment, so they felt like they had to move.

MS testified that she took over as property manager in July 2021 and received a copy of the tenancy agreement.

MS stated that the Tenants were supposed to pay 35% of the hydro. MS explained that the uppers suite was vacant, which she tried to rent out but was unsuccessful. MS stated that she then asked the Tenants to be 100% responsible for hydro since they were the sole occupants of the property. MS acknowledged that renovations were going on in the upper suite but denied that lights were being left on.

MS confirmed that the property was listed for sale in September, but the property was never sold. MS stated that the Landlord instructed to have the property taken off market within three weeks (in her written statement, MS indicates that the property was listed on September 9, 2021 and the listing was removed on September 24, 2021). MS stated that in November 2021, the Landlord decided to move out to where the rental unit to

experience life on the west coast. MS confirmed that the Landlord instructed her to issue the Two Month Notice.

MS stated the Tenants moved out earlier than the effective date of the Two Month Notice, and due to the weather and covid-19, the Landlord was unable to come out right away. In her written statement, MS also mentioned that the Tenants were moving out early because they had purchased a new home for a good deal. MS stated that she was told by the Tenants that the Two Month Notice was a blessing in disguise. A copy of the listing for the Tenants' home is submitted into evidence.

MS explained that there was no furniture and no heat in the house, and it was difficult to get movers due to covid-19, so there was a delay of three or four weeks. MS testified that the Landlord moved into the house in the end of December 2021 and has lived there ever since.

The Landlord testified that she started living at the house on December 27, 2021. The Landlord testified that she continues to live at the property every day and has grocery and utility bills. The Landlord's documentary evidence includes:

- Copy of boarding pass for flight from out of province into BC dated December 6
- Email confirmation of furniture delivered to the property on December 13, 2021
- Email confirmation of cable internet, home phone, and TV order for the property dated December 22, 2021

The Landlord stated that the house needed renovating and she hired a handyman to do the work. The Landlord stated that due to a shortage of materials relating to covid-19, it was difficult to get the materials on time for the renovation. The Landlord explained that she was unable to order the materials before the Tenants moved out and start the renovations right away, because the Tenants did not allow her handyman access to the property. In her written statement, MS states that the Landlord's handyman had requested access to the rental unit on October 21, 2021 so he could prepare a renovation plan. According to MS, she had called the Tenants but they refused to grant access until they moved out.

The Landlord stated that she arrived in the dispute city on December 10, 2021, but the renovations could not be finished by then. The Landlord stated that the weather was also bad which caused delay, and then the handman went on vacation for the holidays, further delaying the work.

The Landlord stated that there was no heat in the property due to an issue with the oil tank. The Landlord testified that on December 22, 2021, she spent \$830.00 to buy oil for the oil tank, which was fully used up by January 28, 2022. The Landlord stated that she had lived at the property for a full month by that point. The Landlord testified that when the oil tank broke, she had asked her neighbours for help to check on it. The Landlord stated she later showed the text messages submitted by the Tenants to their neighbour, who were apologetic. The Landlord stated that they get along well with their neighbours.

The Landlord stated that the renovations continued after she moved into the property. The Landlord explained that she had to keep the windows open for fresh air, which led to high oil consumption. The Landlord stated that originally she had wanted to complete all of the renovations over ten days from December 1 to December 10, 2021, but the condition of the house was worse than they had expected. The Landlord stated that the renovations include changing all of the flooring and painting the walls and ceiling.

The Landlord stated that at first, she was just living in one room in the upper suite, until the renovations were fully completed at the end of February 2022.

The Landlord denied that she had tried to increase the Tenants' rent by \$100.00 or \$500.00.

The Landlord stated that her hydro bills since December 2021 have been around \$123.00 to \$190.00 per month, which is much less than the hydro bills of over \$300.00 per month when the Tenants were there. MS testified that the Tenants had a workshop with electrical equipment on the property.

The Landlord confirmed that a previous property management company she had hired to manage the property quit in June 2021. The Landlord stated she didn't know how that company could have signed a tenancy agreement with the Tenants in July 2021 which states that the Tenants would pay 35% of the utilities.

The Landlord confirmed that she is occupying the entire property with her husband. The Landlord stated that her son is immune-compromised and to ensure that he can come visit, the Landlord wanted to occupy the entire house rather than just the upper suite or the rental unit. The Landlord stated that she did not want to share the house due to her concerns about covid-19. The Landlord stated that she has never rented out any part of the house since moving in on December 27, 2021. The Landlord testified that she had turned down a potential renter suggested by her neighbours.

The Landlord stated that she works from home. The Landlord stated that she and her husband use the two rooms in the upper suite as their office, and cook downstairs and sleep in the bedroom downstairs at night.

The Landlord stated that the Tenants owed more than \$1,000.00 for hydro, so she didn't think they were entitled to the return of their security deposit. The Landlord stated that she did not agree to a 25% split for utilities.

MS testified that the property is zoned as a single-family home, not a duplex. The Tenants testified that there is no doorway between the rental unit and the upper suite.

The Landlord testified that the photographs from the Kijiji listing show the Tenants' car parked out front and do not show the house with its new, re-painted colour. MS confirmed that the MLS number shown is from a listing dated November 2020, and the Landlord did not own the house at that time.

Analysis

1. Are the Tenants entitled to compensation of \$510.60 for monetary loss or money owed?

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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.

Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss states that "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due".

In this case, I accept the Tenants did not have a good relationship with the Landlord from the start due to disputes regarding rent increases and utilities. However, I do not find the evidence to demonstrate that the Landlord to have breached the Act, the

regulations, or the tenancy agreement and caused the Tenants to incur the moving expenses.

In particular, I do not find issuing a notice to end tenancy to be a failure to comply with the Act. I note if the Tenants believed that the Two Month Notice was issued in bad faith, it was open for the Tenants to make an application to dispute that notice. Furthermore, I find the evidence shows that the Tenants moved out of the rental unit before the effective date of the Two Month Notice and had moved into a home which they purchased.

Therefore, I am not satisfied that the Tenants' moving expenses were incurred as a result of any failure by the Landlord to comply with the Act, the regulations, or the tenancy agreement. The Tenants' claim for compensation under this part is dismissed without leave to re-apply.

2. Are the Tenants entitled to recover their security deposit in the amount of \$277.71?

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit

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 accept the Tenants' evidence that they provided a copy of their forwarding address to MS via text message on November 27, 2021, and later by dropping off a document at MS's office. I find MS acknowledged having received the Tenants' forwarding address. I find the Landlord also explained why she did not return the Tenants' security deposit.

Therefore, I find the Landlord was sufficiently served with the Tenants' forwarding address in writing on November 27, 2021, pursuant to section 71(2)(b) of the Act.

I find the Landlord did not repay the security deposit to the Tenants or make an application to retain the security deposit within 15 days after November 27, 2021 or at all. I accept the Landlord may have believed that the Tenants owed her an amount that exceeds the security deposit. However, under section 38(1) of the Act, a landlord must either repay a security deposit or make an application to claim against the deposit within 15 days after the later of the date the tenancy ends or the date that the landlords receives a forwarding address in writing from the tenant. Since the Landlord has not made her own application to seek monetary compensation from the Tenants for unpaid utilities (and to retain the security deposit for any amounts found to be owing), I am unable to determine whether the Landlord is entitled to retain any portion of the security deposit for this purpose.

Section 38(6) of the Act states that if a landlord does not comply with section 38(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.

In this case, I do not find the Tenants to have extinguished their rights to the return of the security deposit under sections 24(1) or 36(1) of the Act, that is, by failing to participate in two opportunities for move-in or move-out inspections. Therefore, I find the Tenants are entitled to recovery of double the security deposit under section 38(6), subject to the amounts which they have agreed in writing for the Landlord to retain.

Residential Tenancy Policy Guideline 17. Security Deposit and Set Off ("Policy Guideline 17") states that "any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit" is an amount to be excluded when determining the amount of the deposit that will be doubled.

Policy Guideline 17 provides the following example calculation:

Example C: A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.

The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is \$350 ($\$400 - \$100 = \$300 \times 2 = \600 less amount actually returned \$250).

I find the Tenants have, by way of their application and monetary order worksheet, acknowledged in writing that they agree for the Landlord to retain \$222.29 of their security deposit to cover a portion of the BC Hydro bills from July, September, and November 2021.

I find the Landlord had retained all of the Tenants' \$500.00 security deposit, including \$277.71 that was not conceded by the Tenants. Therefore, I conclude the Landlord must pay the Tenants double of the amount she retained without authorization, which is \$555.42 (or $\$277.71 \times 2$).

The interest rate on deposits from 2018 to 2022 has been 0% per annum, and 1.95% per annum in 2023. According to Policy Guideline 17, interest is calculated on the original security amount, before any deductions are made, and is not doubled. Therefore, using the Residential Tenancy Branch Deposit Interest Calculator online tool, I conclude the Tenants are entitled to \$1.07 of interest on their security deposit from the start of the tenancy to the date of this decision.

Pursuant to section 38(6) of the Act, I order the Landlord to pay the Tenants \$556.49 for the return of double the disputed portion of the security deposit plus interest.

3. Are the Tenants entitled to compensation in the amount of \$12,000.00 due to the Landlord having ended the tenancy and not complied with the Act?

Section 49(3) of the Act permits a landlord who is an individual to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

I have reviewed a copy of the Two Month Notice and find that it names MS as the landlord. However, I find the Tenants knew or ought to have known that MS was issuing the Two Month Notice as a property manager acting on the owner's behalf. I find it would be reasonable in the circumstances to amend the Two Month Notice to replace MS's name with the Landlord's name pursuant to section 68(1) of the Act.

I find the Two Month Notice to otherwise be a valid notice to end tenancy in form and content under section 52 of the Act.

I find the parties' tenancy was ended on November 27, 2021 as a result of the Two Month Notice and in accordance with section 49(3) of the Act.

The Tenants seek compensation of 12 months' rent from the Landlord under section 51(2) of the Act, which states:

Tenant's compensation: section 49 notice

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 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.

Policy Guideline 50. Compensation for Ending a Tenancy ("Policy Guideline 50") states:

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

In this case, the stated purpose of the Two Month Notice was for the Landlord to occupy the rental unit. Under section 51(1) of the Act, the Landlord is required to occupy the rental unit within a reasonable time after the effective date of the Two Month Notice and for a period of at least six months.

I accept the Landlord's testimony that she began occupying the upper suite of the property by the end of December 2021. I find this testimony to be consistent with the Landlord's documentary evidence which shows that some furniture had been delivered to the property by December 2021, and that the Landlord had also ordered cable internet, home phone, and TV in December 2021. Furthermore, I find the Tenants' text message evidence to confirm that the neighbours had already introduced themselves to the Landlord by early January 2022. I find the Landlord acknowledged that at this point, she was not able to live in the rental unit yet because all of the flooring was being replaced.

I accept the Landlord's testimony that the renovations were completed by the end of February 2022 and that she has occupied the entire property with her husband since that time. I find it is not disputed that the Landlord had turned down a potential renter suggested by her neighbours. I also do not find the Tenants to dispute that the Landlord currently resides in the property.

I note I do not find the Kijiji listing submitted by the Tenants to be reliable proof that the Landlord had tried listing the property for sale in early 2022. I accept the Landlord's evidence that the MLS number from this listing corresponds to a different listing from November 2020. I also do not find the Tenants to dispute that the photograph in the Kijiji listing shows the Tenants' vehicle parked in front of the property. Furthermore, I find if the Landlord had tried listing the property for sale in early 2022, there would likely be other records online, instead of a single Kijiji listing that was quickly removed. In any event, I do not find the Kijiji listing suggest that the Landlord was not occupying the rental unit.

I find it took the Landlord approximately three months after the tenancy ended on November 27, 2021 to begin occupying the rental unit in the end of February 2022.

Policy Guideline 50 states that a "reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances". It further states that 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” (emphasis added).

I find a delay of three months to not be an insignificant period of time, but overall I do not find it to be unreasonable in the circumstances. Based on the evidence presented, I find the property is an older property that would not have been move-in ready for the Landlord. I also accept the Landlord’s evidence that the Tenants had denied her contractor access to the rental unit before the tenancy ended, so the Landlord could not start the renovation plan earlier. In addition, I accept the Landlord’s testimony that there were also delays caused by poor weather, the holidays, a shortage of construction materials due to covid-19, and lack of heat in the property due to issues with the oil tank. Under these circumstances, I find it was not unreasonable for the Landlord to begin occupying a portion of the upper suite of the property within one month after the tenancy ended, and to finally occupy the entire property (including the rental unit) after approximately three months.

Based on the foregoing, I find the Landlord did accomplish the stated purpose of the Two Month Notice within a reasonable time after the tenancy ended on November 27, 2021, and that the rental unit has been used for the stated purpose for at least six months’ duration.

I conclude the Tenants are not entitled to compensation under section 51(2) of the Act. The Tenants’ claim under this part is dismissed without leave to re-apply.

4. Are the Tenants entitled to recover the filing fee?

The Tenants have been partially successful on this application. I award the Tenants recovery of their filing fee under section 72(1) of the Act.

The Monetary Order granted to the Tenants for the total amount awarded in this decision is calculated as follows:

Item	Amount
Return of Double the Disputed Portion of the Security Deposit (2 x \$277.71) Plus \$1.07 Interest	\$556.49
Filing Fee	\$100.00
Total Monetary Order for Tenants	\$656.49

Conclusion

The Tenants' claims for moving expenses under section 67 of the Act and compensation under section 51(2) of the Act are dismissed without leave to re-apply.

The Tenants' claims to recover the security deposit and filing fee are granted. Pursuant to sections 38 and 72 of the Act, I grant the Tenants a Monetary Order in the amount of **\$656.49**. This Order may be served on the Landlord, 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: January 26, 2023

Residential Tenancy Branch