



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **MNSD, MNETC, FFT**

### **Introduction**

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- For an order returning the security deposit pursuant to section 38 of the Act
- For an order for compensation as the tenancy ended pursuant to a two, four, or twelve month notice and the landlord has not complied with the Act pursuant to section 51 of the Act
- For return of the filing fee pursuant to section 72 of the Act

Landlord TC and tenants SS and MO appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

### **Service**

The landlord testified that she did not receive the tenants’ dispute notice and materials. The tenants stated that they served the landlord with the dispute notice and supporting materials by registered mail sent to the landlord’s address. The tenants provided proof of service in evidence in the form of a picture of the package with the date of December 10, 2022. They also provided a Canada Post receipt and tracking number in evidence. The landlord testified that she had moved to Kelowna and no longer resided at the

address that she had provided to the tenants. The landlord stated that she did not arrange to have her mail forwarded to her new address. Based on the evidence of the parties I find that the landlord is deemed to have been served on December 15, 2022 in accordance with sections 88, 89 and 90 of the Act.

The tenants acknowledged receipt of the landlord's evidence package however they did not receive it until March 31, 2023. RTB Rules of Procedure 3.17 require the respondent to serve their evidence on the applicant not later than 7 days prior to the hearing. Therefore, I will not consider evidence that was served within the 7 day window prior to the hearing.

#### Issue(s) to be Decided

1. Are the tenants entitled to an order for return of the security deposit?
2. Are the tenants entitled to a monetary order for compensation of twelve months rent?
3. Are the tenants entitled to recover the filing fee for this application?

#### Background and Evidence

The tenancy commenced February 1, 2018 and was on a month to month basis. Rent was \$1,588.75 per month. The landlord still holds the tenants' security deposit of \$775.00 in trust for the tenants. The tenancy ended May 15, 2022.

#### Compensation Based on Section 51 of the Act

The tenants testified that they vacated the rental unit pursuant to a Two Month notice to End Tenancy. On the Two Month Notice to End Tenancy dated April 22, 2022 the landlord stated that the reason for ending the tenancy was so that the landlord or the landlord's spouse could occupy the rental unit. The tenants stated that they located evidence online that the rental unit was placed on the market for sale and was subsequently sold on July 31, 2022. The tenants produced a screen shot of the rental unit on a website in evidence. The screen shot showed that the rental unit was sold July 31, 2022. The tenants stated that the pictures online of the rental unit showed significant renovations to the rental unit since the tenants vacated the rental unit and based on the renovations, they questioned whether the landlord even intended to occupy the rental unit.

The landlord stated that she accidentally stated on the Two Month Notice to End Tenancy the incorrect reason for ending the tenancy. She testified that the real reason was so that her in-laws could move to Vancouver, live in the rental unit, and provide childcare for the landlord's child. She renovated the unit for her in-laws. Subsequent to serving the notice, the tenant's father in law encountered health problems that prevented him from travelling. She provided medical documentation in evidence showing that her father in law had health conditions. The landlord testified that her father and his spouse travelled from Kelowna to provide childcare for her on a temporary basis and lived in the rental unit from June through August 2022. She provided a statement from the neighbours and a statement from her father in evidence stating that her father lived in the rental unit during that time period. Additionally, from May to August 2022 the landlord's partner used the rental unit as a home office.

The landlord testified that she decided that she needed to move her family to a more affordable location closer to her parents. Therefore, she put the rental unit up for sale. She was offered employment in Kelowna and chose to move there in November 2022. She stated that she sold the condo and did not dispute the tenants' evidence on that point. She stated that the new owners took possession of the rental unit on September 6, 2022. The landlord's position was that it was her intention to allow her in-laws and subsequently her father to occupy the rental unit for six months, however her personal circumstances required her to change her plans and sell the rental unit.

The tenants stated that they received an email from the landlord April 22, 2022 whereby she advised the tenants she was looking for employment in Kelowna. The tenants alleged that this is further evidence that the landlord never intended to occupy the rental unit. The tenants did not produce that email in evidence.

### Security Deposit

The tenants testified that they verbally provided the landlord with their forwarding address on May 1, 2022 and again in writing on May 15, 2022. The tenants did not provide any supporting evidence showing that they provided their forwarding address.

The landlord denied receiving the tenants' forwarding address and stated that she has still not received it to date.

### Analysis - Compensation Based on Section 51 of the Act

The landlord has the onus to establish that she used the rental unit for the purpose stated in the Two Month Notice to End Tenancy or to establish extenuating circumstances that prevented her from using the rental unit in that manner. I find that the landlord has not satisfied her onus to establish either that the rental unit was used for the purpose stated in the notice or that extenuating circumstances prevented her from doing so for the following reasons.

The landlord by her own admission never intended to occupy the rental unit and stated she made a mistake on the Two Month Notice to End Tenancy. There is no evidence before me that the landlord attempted to correct the mistake or communicate her mistake to the tenants. The tenants acted to their detriment following the issuance of the Two Month Notice.

The landlord performed extensive renovations on the rental unit which she stated were for the benefit of her in-laws. I find it somewhat disingenuous that the landlord would perform extensive renovations on the rental unit that was going to be used by her in-laws on a temporary basis. Further the landlord provided no evidence that her husband used the rental unit as a home office on a part time basis, and I note that the time period where this was supposed to have occurred overlapped with her father residing in the rental unit. The property listing evidence provided by the tenants shows that the rental unit is a one bedroom one bathroom unit.

I find based on the evidence of the tenants that the landlord planned to relocate to Kelowna as early as April 2022.

The tenants' application for compensation of 12 month's rent is granted.

#### Analysis - Security Deposit

It is undisputed that the landlord still holds the tenants' security deposit. I find that the tenants have not established that they provided the landlord with their forwarding address. The tenants stated it was provided twice, May 1 and May 15, 2022. The landlord denies receiving the forwarding address. Where one party provides one version of events, and the other party provides an equally probable but different version of events, without further evidence the party with the burden of proof has not met their onus to prove their claim.

I dismiss the tenants' claim for the return of their security deposit.

As the tenants were partially successful in their claim, they are also entitled to recover the \$100.00 filing fee for the application.

### Conclusion

The tenants are granted a monetary order for \$19,165.00 for compensation and in recovery of the filing fee. The monetary order must be served on the landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: April 11, 2023

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Residential Tenancy Branch