



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCT, 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 a monetary order for damage or compensation pursuant to section 67 of the Act
- 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 reimbursement of the filing fee pursuant to section 72 of the Act

Landlord GG and tenants DS and PG 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.

The landlord testified that he received the tenants' dispute notice and materials and based on his testimony I find he was duly served in accordance with sections 88 and 89 of the Act. The landlord further testified that he did not serve the tenants with his evidence and so I will not consider his documentary evidence in my decision.

Issue(s) to be Decided

1. Are the tenants entitled to a monetary order for compensation?

2. Are the tenants entitled to a monetary order for the return of security or pet deposits?
3. Are the tenants entitled to a monetary order for compensation of twelve months rent?
4. Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on November 1, 2019. Rent was \$2,300.00 per month due on the first day of the month. The landlord took a security deposit of \$1,150.00 and a pet deposit of \$1,150.00. A portion of the security deposit in the amount of \$1,175.00 was returned to the tenants by cheque dated November 24, 2022. The tenants vacated the rental unit on October 31, 2022.

Section 51 Compensation

The tenants stated that they received a Two Month Notice to End Tenancy ("Two Month Notice") and a Four Month Notice to End Tenancy ("Four Month Notice"). Both notices were provided in evidence. The Two Month Notice was dated September 1, 2022 with an effective date of October 31, 2022 and the Four Month Notice was dated June 30, 2022 with an effective date of October 31, 2022. The tenants initially disputed both notices and attempted to negotiate a settlement with the landlord. The tenants testified they understood that the Two Month Notice was issued to permit the landlord or a close family member to occupy the rental unit. They understood that the Four Month Notice was issued to rezone the property and create a parking space for commercial vehicles.

The tenants testified that they found new accommodation and vacated the rental unit on October 31, 2022 pursuant to the notices. In July 2022 the tenants found the rental property listed for sale online. They testified that the rental property was sold on September 24, 2022.

The landlord testified that the tenants had initially refused to vacate the property pursuant to the two notices that he served on the tenants and that the tenants "denied" the notices. The landlord further testified that the reason he issued the notices was that he wanted possession. The landlord agreed that the rental property had been sold. He did not provide any evidence showing that the purchaser requested that the landlord issue a notice to end tenancy to the tenants.

Compensation of One Months Rent

Both parties agreed that the landlord did not provide the tenants with one months rent as compensation for receiving the Two- and Four-Month Notices. The landlord stated that the reason he did not compensate the tenants was because they “denied” both notices.

Security Deposit

Both parties agreed that although the landlord and tenants did a walk through of the rental unit when the tenants vacated, a move out condition inspection report was not completed. Both parties agreed that the landlord returned \$1,725.00 of the tenants’ security and pet deposits by cheque dated November 24, 2022. It is not in dispute that the landlord withheld \$575.00 of the deposits without the agreement of the tenants.

The tenants testified that they provided the landlord with a forwarding address by email on October 27, 2022 and followed up with a further email on November 11, 2022 and provided the forwarding address a second time. The tenants stated that they did not provide their forwarding address on the RTB form.

The landlord testified that he did not receive the October 27, 2022 email but he did receive the November 11, 2022 email. After he received the email he mailed the tenants a cheque with their remaining deposit on November 24, 2022. The cheque was sent by regular mail.

Analysis

RTB Rules of Procedure 6.6 states, “The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The tenants have also applied for compensation under section 51 of the Act. RTB Police Guideline 50 sets out the procedure for compensation under section 51 of the Act as follows:

Sections 51 and 51.4 of the RTA require a landlord to pay further compensation to a tenant if the landlord does not prove that they have accomplished the purpose for which the tenancy was ended within a reasonable period or, in some instances, did not use the rental unit for the stated purpose for at least 6 months

duration. The director may only excuse a landlord from having to pay this further compensation if there were extenuating circumstances.

The onus in an application for section 51 compensation for 12 months rent is on the landlord to prove he used the property for the purpose stated in the notice.

Section 51 Compensation

Under the Act, if the landlord does not use the property for the use stated in the Two- or Four-Month Notice, the tenants are entitled to compensation equal to 12 months rent. The Two Month Notice stated the reasons as follows:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

☒ The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
Please indicate which close family member will occupy the unit.

☐ The landlord or the landlord's spouse

☐ The child of the landlord or landlord's spouse

☐ The father or mother of the landlord or landlord's spouse

☒ The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

☒ All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

☒ The tenant no longer qualifies for the subsidized rental unit.

The Four Month Notice gives the following reasons:

I am ending your tenancy because I am going to: (check a box that applies)

☐ Demolish the rental unit.

☒ Convert the residential property to strata lots under the Strata Property Act.

☐ Convert the residential property into a not for profit housing cooperative under the Cooperative Association Act.

☐ Convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.

☒ Convert the rental unit to a non-residential use.

☐ I have obtained all permits and approvals required by law to do this work. Please complete the information below.

It is very difficult given these notices to determine the actual reason that the landlord wished to end the tenancy. I find that the landlord issued the Two Month Notice to the tenants on September 1, 2022 prior to selling the property on September 24, 2022. The Four Month Notice was dated June 30, 2022 with an effective date of October 31, 2022.

In addition, the landlord's evidence was that both notices were issued because he just wanted possession. I find that the landlord did not use the property for a purpose stated in either notice. The tenants are entitled to compensation of 12 months rent equal to \$27,600.00.

Compensation of One Months Rent

It is undisputed that the tenants did not receive one months rent as compensation for vacating the rental unit pursuant to a Two- or Four-Month Notice. The landlord stated that he did not compensate the tenants because they "denied" the notices which I interpret to mean that the tenants disputed both notices. That is not a valid reason under the Act for withholding compensation. The Act is clear that the tenants are owed compensation of one months rent, and the Act does not require the tenants to accept the validity of the notices in order to receive compensation. The tenants were entitled to dispute the notices. The tenants abandoned their dispute and vacated the rental unit. I find that the tenants are entitled to one months rent as compensation based on section 51 of the Act The tenants are granted \$2,300.00 in compensation.

Security Deposit

. Section 38 of the Act states that within 15 days of receiving the tenants' forwarding address the landlord must do one of two things:

- Return the entire security and pet deposits or
- File a dispute application to keep the deposits

Further section 38 of the Act allows the landlord to withhold a portion of the security and/or pet deposits only if the tenants agree in writing to allow the landlord to withhold all or part of the deposits. It is undisputed that the tenants did not agree in writing to allow the landlord to withhold a portion of the deposits. It is undisputed that the landlord did not file an application for dispute resolution within 15 days of receiving the tenants' forwarding address. RTB Policy Guideline 17 states in part:

Unless the tenant has 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 tenant's forwarding address is received in writing;

I find that the tenants are entitled to receive double the amount of the security and pet deposits equal to \$4,600.00, less the \$1,725.00 that the landlord returned to the tenant. The entire deposit is doubled as the tenants did not agree in writing to allow the landlord to withhold any portion of the deposits. The tenants are entitled to receive \$2,675.00 in compensation.

The tenants' application is granted. As the tenants were successful in their application, they are also entitled to recover the \$100.00 filing fee for the application.

Conclusion

The tenants are entitled to a monetary order as follows:

Claim	Amount
12 Months Rent	\$27,600.00
One Months Rent	\$2,300.00
Security deposit (double less amount returned)	\$2,675.00
Filing Fee	\$100.00
Total	\$32,765.00

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

Residential Tenancy Branch