



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNL-4M, FFT, MNSD, MNSD

### **Introduction**

A hearing was convened on January 16, 2023 in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Four Month Notice to End Tenancy for Landlord's Use and to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution. At the hearing on January 16, 2022 the Tenants withdrew the application to cancel the Notice to End Tenancy, as the rental unit has been vacated.

The hearing on January 16, 2023 was adjourned to allow for the exchange of documents. The hearing was reconvened on May 23, 2023 and was concluded on that date.

Service of the original Dispute Resolution Package was addressed in my interim decision and will not be re-visited here.

In my interim decision of January 16, 2023, I directed the Tenants to re-serve the Landlord with Amendment to the Application for Dispute Resolution and documents submitted to the Residential Tenancy Branch in December, August, and September of 2022, via email. The female Tenant stated that these documents were sent to the Agent for the Landlord, by email, on January 24, 2023. The Tenants submitted a copy of the email and associated attachments to the Residential Tenancy Branch.

The Agent for the Landlord acknowledged receipt of these documents. He stated that these documents "disappeared" from his email a few days after they were received. As this evidence was properly served to the Landlord, it was accepted as evidence for

these proceedings. The Tenants cannot be disadvantaged simply because the Agent for the Landlord did not properly preserve legal documents that were provided to him.

In my interim decision of January 16, 2023, I directed the Landlord to re-serve the Tenants with documents submitted to the Residential Tenancy Branch in October of 2022 and January of 2023, via email. The Agent for the Landlord stated that these documents were sent to the Tenants, by email, on January 25, 2023. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On May 07, 2023 the Tenants submitted additional evidence to the Residential Tenancy Branch. This evidence was not accepted as evidence for the proceedings, as the Tenants did not have authority to submit additional evidence.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

#### Issue(s) to be Decided

Are the Tenants entitled to compensation for being served with a Two Month Notice to End Tenancy for Landlord's Use?

Should the security/pet damage deposit be returned to the Tenants?

#### Background and Evidence Presented on January 16, 2023

The Agent for the Landlord and the Tenants agree that this tenancy began on October 05, 2019 and that monthly rent, at the end of the tenancy, was \$880.00.

The Tenants submitted a copy of a tenancy agreement which identifies the Tenant with the initials "YW" as the Tenant and an individual with the initials "EL" as the Landlord.

The female Tenant stated that the Agent for the Landlord acted as a building manager for "EL" and that he was present when she paid her security deposit of \$375.00 and pet damage deposit of \$375.00 to "EL". The Agent for the Landlord stated that he does not know if he was present when these deposits were paid to "EL".

The Agent for the Landlord and the female Tenant agree that rent was paid to the Agent for the Landlord during the tenancy and that the Tenants paid rent for October, in the amount of \$880.00.

The Agent for the Landlord and the female Tenant agree that on August 05, 2022 the Agent for the Landlord posted a Four Month Notice to End Tenancy on the Tenants' door, which declared that the Tenants must vacate the rental unit by December 07, 2022. The reason for ending the tenancy cited on the Notice is that the rental unit will be demolished.

The Agent for the Landlord stated that he served the Four Month Notice to End Tenancy because the owner, who has the initials "KZ", told him that the unit was going to be demolished and rebuilt.

The Agent for the Landlord stated that he did not act as an agent for "EL". He stated that he rented the house from the owner, who has the initials "KZ"; that he lived in the house and shared the kitchen with the Tenant; that the Tenant had a private room in the house; and that he had a private room in the house.

When he was asked to provide his current home address, he stated he lived at the address listed for him on the Application for Dispute Resolution. When he was asked how long he had lived at that address, he replied that he has lived there since 2015. He subsequently stated that he moved to a room in the residential complex in August of 2022.

The female Tenant stated that the Agent for the Landlord moved some property into a room in the rental unit in August of 2022, but he never lived there and he never shared the kitchen with her.

The female Tenant stated that a bailiff removed their property from the rental unit on October 12, 2022. The Agent for the Landlord stated that he does not know when the Tenants vacated the rental unit, as he had moved all of his property from the rental unit prior to October 12, 2022.

The Tenants submitted a Writ of Possession which requires the Agent for the Landlord to vacate the rental unit.

The female Tenant stated that she named the Agent for the Landlord as the Respondent in this matter because he was the building manager; she paid her rent to him; he served the Four Month Notice to End Tenancy; and she does not have a mailing address for “EL”. I note that the address for service for the Landlord in the Notice to End Tenancy is the address the Agent for the Landlord provided at the hearing as his home address.

The Tenants are seeking compensation in the equivalent of one month’s rent because they were served with a Four Month Notice to End Tenancy. They are also seeking a partial rent refund of the rent they paid for October, in the amount of \$568.00, which they refer to as “residual rent”.

The Tenants are seeking to recover double the security and pet damage deposit.

The female Tenant stated that she served the Agent for the Landlord with a forwarding address, in writing, on November 01, 2022, via registered mail. The female Tenant cited a tracking number for this package, which appears on the first page of this interim decision.

The Agent for the Landlord denied receiving a forwarding address for the Tenants.

The Agent for the Landlord and the Tenants agree that:

- A security deposit of \$375.00 was paid;
- A pet damage deposit of \$375.00 was paid;
- The Tenants did not give the Landlord written authority to retain the deposits;
- The Landlord has not filed an Application for Dispute Resolution claiming to keep the deposits; and
- The deposits have not been returned.

#### Background and Evidence Presented on May 23, 2023

The Agent for the Landlord stated that he sees his name printed on the bottom of the tenancy agreement. He stated that he did not sign the tenancy agreement and that the

signature on the agreement is not his. The female Tenant stated that she was present when the Agent for the Landlord signed the tenancy agreement.

The Agent for the Landlord initially stated that he is not named as the Landlord on the Four Month Notice to End Tenancy for Landlord's Use. After viewing the document, he acknowledged that he is named as the Landlord on it and that he signed the Notice. He stated that he served this Four Month Notice to End Tenancy for Landlord's Use to the Tenants because the police told him it was necessary.

The female Tenant stated that the Tenants were not given the free month's rent that is due to them because they were served with a Two Month Notice to End Tenancy for Landlord's Use of Property. The Agent for the Landlord stated that he was not aware the Tenants were entitled to compensation because they were served with a Two Month Notice to End Tenancy for Landlord's Use of Property.

The female Tenant stated that the RTB-47, dated December 12, 2022, is not the form that was sent to the Landlord on November 01, 2022. The RTB-47 is a form generated by the Residential Tenancy Branch for the purposes of providing landlords with a tenant's forwarding address. The female Tenant stated that this form was not sent to the Landlord until it was served as evidence for these proceedings. She stated that it was included in the documents that were emailed to the Agent for the Landlord on January 24, 2023.

The Agent for the Landlord stated that he did not receive the RTB-47, dated December 12, 2022, in the evidence sent to him by the Tenants on January 24, 2023.

The female Tenant stated that the forwarding address that was mailed on November 01, 2022 was written on a letter. She stated that a copy of this letter was submitted to the Residential Tenancy Branch, although I am unable to find a copy of this letter.

The Agent for the Landlord again denied receiving the registered mail that was sent to him on November 01, 2022, although he confirms that the mailing address on that package is his mailing address.

### Analysis

Section 4(c) of the *Residential Tenancy Act (Act)* stipulates that the *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

As there is no evidence that the Agent for the Landlord is the owner of the residential property, I find that I am not prevented from considering this dispute pursuant to section 4(c) of the *Act*.

I find, on the balance of probabilities, that the party named as the Respondent on this Application for Dispute Resolution is a landlord, as that term is defined by the *Residential Tenancy Act (Act)*.

The *Act* defines a “landlord” as:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

I find that the Respondent is the owner's agent who, on behalf of the landlord, permitted occupation of the rental unit under a tenancy agreement and exercised powers and performed duties under the tenancy agreement or a service agreement. As such, I find that he meets the definition of a landlord and is properly named as a Respondent in the Application for Dispute Resolution.

In spite of the Landlord's testimony that he was not an agent for the Landlord, I find that he acted on behalf of the Landlord when he collected rent for the rental unit and when he served a Two Month Notice to End Tenancy for Landlord's Use, in which he named himself as a landlord. Those are duties typically undertaken by a landlord or an agent for the Landlord.

Even if I accept the Landlord's testimony that he rents the house from the owner, who has the initials "KZ", I find that "EL" rented this house to the Tenant and the Respondent was acting as an agent for "EL".

On the basis of the undisputed evidence, I find that on August 05, 2022 the Agent for the Landlord served the Tenants with notice of the Landlord's intent to end the tenancy pursuant to section 49(6)(a) of the *Act*.

On January 16, 2023 the Agent for the Landlord testified that he served the Four Month Notice to End Tenancy because the owner, who has the initials "KZ", told him that the unit was going to be demolished and rebuilt. On May 23, 2023 the Agent for the Landlord testified that he served the Four Month Notice to End Tenancy because the police told him it was necessary. I find the Agent for the Landlord's reason for serving the Four Month Notice to End Tenancy for Landlord's Use is largely irrelevant.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the Tenants received a notice to end tenancy pursuant to section 49(6)(a) of the *Act*, I find that they are entitled to compensation of \$880.00, which is the equivalent of one month's monthly rent.

The Tenants lived in the rental unit for the period between October 01, 2022 and October 12, 2022. They were not required to pay rent for this period, pursuant to section 51(1) of the *Act*. As the Tenants did not live in the unit after October 12, 2022, I find that they are entitled to compensation of \$539.41 for the remainder of October, pursuant to section 51(1) of the *Act*. (19 days X per diem rate of \$28.39)

As the Tenants paid rent for October of 2022 when they were not required to do so, I find that the Landlord must return that payment of \$880.00.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence, I find that the Tenants paid a security deposit of \$375.00 and a pet damage deposit of \$375.00, which have not been returned by the Landlord.

I favor the testimony of the female Tenant, who stated a forwarding address was mailed to the Agent for the Landlord on November 01, 2022, over the testimony of the Agent for the Landlord, who stated the forwarding address was not received. I favored the female Tenant's testimony, in large part, because it was corroborated by a Canada Post "stamp" and associated envelope that shows something was mailed to the Agent for the Landlord.

A search of the Canada Post tracking number for the aforementioned package on the Canada Post website shows that the package was mailed on November 01, 2022 and that it was delivered on November 09, 2022. The website shows that a signature to confirm delivery was obtained but the signatory requested that signature not be displayed on the website. I find this strongly corroborates the female Tenant's testimony. Conversely, the Agent for the Landlord provided no evidence to corroborate his testimony that he did not receive the package that was delivered to his address on November 09, 2022.

I favored the female Tenant's testimony regarding service of the forwarding address, in part, because I found the Agent for the Landlord's testimony to be less reliable. In reaching this conclusion I was influenced by the Agent for the Landlord's testimony that he did not receive a copy of the RTB-47 when documents were sent to him by the Tenants on January 24, 2023. The Tenants submitted a copy of the attachments sent to the Agent for the Landlord, via email, on January 24, 2023, which clearly includes a copy of the RTB-47. The Agent for the Landlord's testimony that he did not receive this document, when the evidence strongly suggests that he did, causes me to lose faith in his testimony that he did not receive documents that were mailed to him on November 01, 2022.

I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security



deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenants double the security deposit and pet damage deposit.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Tenants have established a monetary claim, in the amount of \$3,019.41, which includes a rent refund of \$880.00 from October of 2022, \$539.41 in compensation for being served with a Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*, double the security and pet damage deposit, which is \$1,500.00, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Tenants a monetary Order for \$3,019.41. In the event the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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: May 24, 2023

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Residential Tenancy Branch