



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## **DECISION**

Dispute Codes      **MNSD, MNETC**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38.
- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67.

The tenant attended and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

The tenant stated she was not recording the hearing.

The tenant provided her email address for the Decision. She provided an updated residential address which is on the first page. The application is accordingly amended.

The landlords are referenced in the singular.

The landlord did not appear at the hearing. I kept the teleconference line for 58 minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

*Service*

As the landlord did not attend the hearing, the tenant provided affirmed testimony regarding service.

The Rules of Procedure state that the tenant must serve the landlord with a copy of the Application and Notice of Hearing. The tenant testified that the Notice of Dispute Resolution Proceeding package, which included a copy of the Application and the Notice of Hearing, was hand delivered by her to the landlord on September 10, 2022, the day after issuance of the Notice by the RTB.

The tenant stated the rental unit was the basement of a house, the rest of which was occupied by the landlord. They are well known to the tenant. She went to the landlord's door of their home, upstairs from the unit, and delivered the document to the landlord.

The tenant submitted a copy of the Two Month Notice. The address for service of the landlord is the landlord's home where the tenant went to personally serve the landlord.

Based on the tenant's credible evidence, I find the tenant personally served the landlord on September 10, 2022.

I confirmed that the hearing details in the Notice were correct, and I note that the tenant had no difficulty attending the hearing on time using this information.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply.

Based on the above and as there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled, despite the absence of the Landlord or an agent acting on their behalf.

#### Issue(s) to be Decided

Is the tenant entitled to compensation of 12 months' rent?

Is the tenant entitled to return of double the security deposit?

### Background and Evidence

The tenant provided uncontradicted evidence as the landlord did not attend the hearing.

The tenant filed this application on September 9, 2022, claiming she is entitled to compensation of 12 months rent of \$1,200.00 monthly totalling \$14,400.00 as the landlord's child or spouse did not move into the unit as stated in the Two Month Notice.

The tenant also claimed the return of double her security deposit of \$650.00, less partial payment of \$500.00 returned on June 15, 2021.

### *Tenancy Background*

The tenant submitted a copy of the tenancy agreement.

The tenancy began on August 15, 2019. At the end of the tenancy, rent was \$1,200.00 monthly. The tenant paid a security deposit of \$650.00 at the beginning of the tenancy.

The unit is a basement apartment in a house occupied by the landlord upstairs.

### *Two Month Notice*

The landlord issued a Two Month Notice dated September 1, 2020, which stated the tenant must move out of the unit by October 31, 2020. A copy of the Notice was submitted which was in the RTB form.

The Notice stated the unit would be occupied by the “child of the landlord or the landlord’s spouse” 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.

**Purchaser Information: (complete only if issuing this Notice because the purchaser asked for notice to be given)**

first and middle name \_\_\_\_\_ last name \_\_\_\_\_

unit # \_\_\_\_\_

The tenant submitted a copy of a signed letter from KG, the daughter of the landlord. The letter stated she and her husband HG intended to move into the unit on December 1, 2020.

### *Previous Proceedings*

The tenant did not dispute the Two Month Notice and did not move out.

On February 23, 2021, an Arbitrator issued a Decision granting the landlord an order of possession.

The tenant did not attend the hearing and applied for a Review Consideration of the February 23, 2021, Decision and Order stating that they were not served with notice of the hearing.

On March 3, 2021, a different Arbitrator suspended the February 23, 2021, Decision and Order pending the outcome of this Review Hearing held on May 27, 2021.

The landlord BG (landlord), landlord agent KG (agent) and the tenant attended the Review Hearing.

The landlord was granted an Order of Possession effective May 31, 2021. The file number appears on the first page.

The tenant moved out on May 31, 2021.

The tenant provided her forwarding address in writing on May 31, 2021. She left the address on a piece of paper in the suite when she was moving out. She told the landlord, "There is my forwarding address", and pointed to the paper.

The landlord made no objections to the condition of the apartment and promised to return the entire security deposit to the tenant.

On June 15, 2021, the landlord partly returned the security deposit in the amount of \$500.00, retaining \$150.00. The landlord did not bring an application to keep the security deposit. The landlord provided no explanation for keeping part of the security deposit.

The tenant has not agreed that the landlord may keep any part of the security deposit.

### *Occupancy*

The tenant moved to another apartment close to the unit. She drove by the unit regularly after she moved out and continues to do so. The unit's driveway is clearly visible from the highway.

The tenant knew the license plate numbers and description of the vehicles owned by the landlord's daughter and her husband ("the vehicles") as they visited the landlord regularly when she lived in the unit.

The tenant has never seen the vehicles at the building except for the occasional Sunday for a short time.

The tenant went to the unit two months after she moved out and introduced herself to an older woman, 60 years old, who was in the front yard. The woman told the tenant she rented the unit. The woman was not the landlord's daughter.

The tenant's son JR and a friend ("Hilda") also live in the area. The tenant provided each of them with pictures of the landlord's daughter's and husband's vehicles with license plates. They both told the tenant they did not see the cars in the unit's driveway after the tenant moved out.

### *Summary*

In summary, the tenant requested 12 months rent as compensation as the landlord did not carry out the purpose stated in the Notice and the return of double the security deposit

### Analysis

#### *Credibility*

I find the tenant provided credible testimony in all aspects. The tenant provided a clear account of what took place between her and the landlord. The tenant submitted supporting documents such as a copy of the tenancy agreement, the

Two Month Notice, the daughter's letter confirming she was moving in, and reference to the earlier Decisions.

### *Compensation*

Section 49 of the Act provides circumstances where a landlord can end a tenancy for landlord's use of property.

Section 49 (3) of the Act provides that a landlord who is an individual may 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.

Section 51(2) says that the landlord must pay 12 times the monthly rent if steps have not been taken within a reasonable period to move in or the unit is not used for the purpose for at least 6 months, beginning within a reasonable period after the tenant moves out.

The landlord issued a Two Month Notice dated September 1, 2020, stating that his child or spouse were moving into the unit. The daughter KG signed a letter dated November 30, 2020, stating she and her husband were moving into the unit.

The landlord's daughter and her husband did not move into the unit after the tenant moved out.

I accept the tenant's evidence that she met the unit's new occupant who was not the landlord's daughter, about two months after the tenant moved out. She never saw the daughter's or husband's vehicles in the driveway which were known to the tenant and would have indicated to her that they moved in. Her son and friend who lived nearby never saw the vehicles at the unit.

I find the tenant has met the burden of proof on a balance of probabilities that the landlord failed to comply with section 51(2) and did not use the rental property for the reason stated in the Two Month Notice. The persons named in the Notice did not occupy the unit for a six-month duration within a reasonable period after the tenant moved out or live in the unit for at least 6 months within a reasonable

period after the unit was vacant. There are no suggested extenuating circumstances .

The tenant is therefore entitled to an award of 12 times the rent of \$1,200.00 monthly which I find is \$14,400.00.

I grant the tenant a Monetary Order in that amount.

### *Security deposit*

I accept the tenant's credible testimony in all aspects and find as follows. The landlord returned \$500.00 on June 15, 2021, within 15 days of the end of the tenancy. The entire security deposit was \$650.00.

The tenant did not agree that the landlord withhold any of the security deposit. The landlord did not bring an application to retain the security deposit.

The tenant requested return of double the security deposit for the landlord's failure to return the security deposit within 15 days of the provision of the forwarding address.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to Section 38(4)(a).

I find that at no time has the landlord brought an application for dispute resolution claiming against the security deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*.



I accept the tenant's evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act*. I find the landlord received the tenant's forwarding address on May 31, 2022.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenant is entitled to a monetary order of doubling of the security deposit (\$650.00 x 2). The partial return of \$500.00 is deducted from the award.

*My Award*

I grant the tenant a Monetary Order of **\$15,200.00** calculated as follows

ITEM	AMOUNT
12 times monthly rent	\$14,400.00
Security deposit	\$650.00
Doubling of security deposit	\$650.00
(Less partial return)	(\$500.00)
<b>TOTAL MONETARY ORDER</b>	<b>\$15,200.00</b>

Conclusion

I grant the tenant a Monetary Order in the amount of **\$15,200.00** as described above.

This Order must be served on the landlord. If the landlord fails to comply with this Order the tenant may file and enforce the Order in the Courts of the Province of BC.

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 16, 2023

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Residential Tenancy Branch