



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSD, MNETC

Introduction

This hearing dealt with the Tenant's application under the Residential Tenancy Act (the "Act") for:

- return of the security deposit and/or pet damage deposit in the amount of \$2,250.00 pursuant to section 38; and
- compensation in the amount of \$22,200.00 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 section 51.

The Landlord and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Tenant was represented by an advocate, AP.

The parties did not raise any issues with respect to service of materials for dispute resolution. The Landlord confirmed receipt of the notice of dispute resolution proceeding package and the Tenant's evidence. The Tenant confirmed receipt of the Landlord's evidence.

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

Preliminary Matter – Correction of Landlord's Name

This application initially contained a typo in the Landlord's name. The Landlord confirmed the correct spelling. I have amended this application to correct the Landlord's name pursuant to section 64(3)(c) of the Act.

Preliminary Matter – Landlord’s Claims

The Landlord submitted evidence regarding claims against the Tenant, including damage to the rental unit, cleaning, and strata fines. However, since the Landlord has not made a cross-application, I am unable to address the Landlord’s claims in this decision. The Landlord is at liberty to make a separate application within the applicable time limits.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to compensation of 12 months’ rent?

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.

This tenancy commenced on November 2, 2021. Rent was \$1,850.00 due on the first day of each month. The Tenant paid a security deposit of \$925.00.

The parties did not complete a condition inspection report at the start of the tenancy. According to the Landlord, the parties made a mutual decision to do without a report.

In January 2022, the Landlord messaged the Tenant to explain that he needed the rental unit back for his sister. The Landlord submitted text messages from January and February 2022 which include the following exchanges between the parties (portions redacted for privacy):

Landlord: Hey. No worries. I was gonna try to call you. Unfortunately..... I’m gonna need the condo back eventually for my sister. She’s in a really bad low income housing condo in [city]. [...]

Tenant: Kk sounds like a plan

Landlord: How much time would you like?
Months I mean

Tenant: What are the options?

Landlord: 2 months? 3 months?

Tenant: Yea i was ghessing that wouod be in the range of possibukuty. (sic)
Wanna do the rest of this month and then two full ones after?

Landlord: So April 1st then
I can write something up and we can both sign it

Tenant: Yea but wouldn't it be the second? Didn't we move in on a nov 3?

Landlord: The second of april? Sure

Tenant: Sounds good thanks for the warning. Hope things work out alright
for your sister. Would i be able to use you as a reference for
applying to new places, or possibly other things it might make
sense for?

Landlord: Sure. I'd like to take a look at the place in the near future too
though

[...]

Landlord: I can try for 430
And if I get off work early, maybe I can get your place earlier than
that

Tenant: Appreciated, earlier is better for sure and i agree its good to get it
out of the way. What papers am i expected to sign though?

Landlord: I'll just write on a piece of paper that we agreed that April 2-3 would
be the end of your tenancy

Tenant: I know we agreed that and im not disputing it. If you mean the mutual agreement to end tenancy shouldnt it say because your sister is moving in instead?

Landlord: Sure. I'll definitely write that in there

Tenant: Yea im not trying to dispute or change anything, I just want it to be recorded the way it was because it wasn't actually a mutual agreement to end tenancy. Im pretty sure theres something else we would need to sign instead for this type of situation, so im not surr what you mean youll be writing it in. (*sic*)
It shouldnt be a problem or change anything. Family comes forst as it should. I respect it an your supposed to be able to do that (*sic*)

Landlord: Thanks. I appreciate that

Tenant: Yeah i get it. Even though its disappointing for me life goes on and it sounds like it's the right thing to do

The Landlord issued a two month notice to end tenancy for landlord's use of property dated February 3, 2022 (the "Two Month Notice"). This notice is signed by the Landlord and had an effective date of April 3, 2022. It states the reason for this notice is that "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)." None of the boxes for indicating which family member will occupy the unit was checked off. The Landlord gave a copy of this notice in person to the Tenant on February 3, 2022.

The Landlord submitted that the Tenant did not pay the last month's rent for March 2022.

The tenancy ended by April 3, 2022. According to the Landlord, the Tenant moved out on April 2, 2022. The Landlord submitted that the Tenant left partway through the move-out inspection in anger due to the damages that the Landlord was pointing out.

The Tenant submits that when he moved out, he paid an elevator deposit of \$200.00 to the strata property manager, J. AP argued that this amount was part of the security deposit because the Landlord had asked the Tenant to pay it. The Tenant acknowledged he was told by J that he would not be getting this deposit back.

According to the Tenant, he mailed a forwarding address letter to the Landlord on May 21, 2022. The Landlord acknowledged receipt of this letter. The Landlord stated that he offered to return \$700.00 of the security deposit but the Tenant refused. The Landlord confirmed that he did not make an application to claim for damages. The Landlord indicated that he thought the procedure was for the Tenant to take him to arbitration. The Landlord expressed that the damages to the rental unit exceed the amount of the security deposit.

AP argued that the Act protects housing stability for tenants and protects against arbitrary evictions. AP argued that the Tenant was put out of a place, affecting his life, which is why landlords need to follow the rules and the amount of 12 months' compensation is justified. AP submitted that the definition of a close family member does not include a sister. AP argued that there were no extenuating circumstances to excuse the Landlord since the Landlord's sister did not even live at the rental unit for six months. AP argued that there is a power imbalance between the parties and that the Tenant was wrongfully evicted. AP argued that the Landlord also wrongfully withheld the security deposit.

The Landlord argued that the parties had ended the tenancy by mutual agreement. The Landlord argued that he was honest with his intention about his sister moving in with no ulterior motive. The Landlord argued that the Tenant agreed via text messages to end the tenancy for this reason. The Landlord argued that the Tenant only disagreed with the reason for ending the tenancy after the parties had a disagreement about the security deposit. The Landlord submitted that when he met with the Tenant in person to serve the Two Month Notice, the parties had agreed to not check any of the boxes on the Two Month Notice because none of them applied to the parties' situation. The Landlord submitted that he had suggested drawing up a document more suited to the parties' situation, but the Tenant had declined and preferred to use the Two Month Notice. The Landlord argued that the Tenant decided to dispute the Two Month Notice after the fact out of revenge for not getting his security deposit back.

According to the Landlord, his sister moved into the rental unit on April 10, 2022 and moved out May 15, 2022. The Landlord argued that his case is an extenuating circumstance because his sister's safety was at stake. The Landlord submitted that his sister was living in a low income social housing unit fraught with drug use and violent crime. The Landlord submitted that he felt obligated to help her.

The Tenant argued that until he received the proper paperwork, there was no binding agreement for him to move out. During the hearing, the Tenant asked how much the Landlord has since re-rented the unit for, but the Landlord did not provide an answer.

Analysis

1. Is the Tenant entitled to return of double the security deposit?

Section 1 of the Act defines a “security deposit” as “money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security [...]” (emphasis underlined). I do not find J, the strata property manager, to be an agent of the Landlord such that J may also be considered a “landlord” under section 1 of the Act. Therefore, I do not find the security deposit paid by the Tenant to the Landlord to include the \$200.00 elevator deposit paid to J.

Pursuant to sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and the regulations. Section 38 of the Act sets out specific requirements for dealing with security deposits at the end of a tenancy.

Under section 24(2) of the Act, a landlord’s right to claim against a security deposit for damage to the rental unit is extinguished if the landlord:

- does not offer the tenant at least two opportunities for an inspection at the start of the tenancy in accordance with the regulations (the landlord must use a Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity for inspection);
- having offered the tenant opportunities for inspection, does not participate on either occasion; or
- does not complete the inspection report and give the tenant a copy of it in accordance with the regulations.

In this case, I find the Landlord’s right to claim against the security deposit for damage to the rental unit was extinguished first. I find the Landlord did not complete a condition inspection report and provide a copy to the Tenant at the start of the tenancy. I accept the parties may have agreed that a condition inspection report was not necessary. However, by not insisting on completing a condition inspection report together, the Landlord extinguished his right to the security deposit under section 24(2) of the Act. Extinguishment means the Landlord lost the right to claim *against* the security deposit

for damage to the rental unit, but could have made other claims against the security deposit within the time limit required under the Act, or, after returning the deposit, still make an application to seek monetary compensation from the tenant, including for damage to the rental unit.

I note the Landlord's evidence that the Tenant left partway through the move-out inspection. However, according to Residential Tenancy Policy Guideline 17. Security Deposit and Set off ("Policy Guideline 17"):

In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. For example, if the landlord failed to give the tenant a copy of the inspection done at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first.

(emphasis underlined)

As mentioned above, I find the Landlord's right to the deposit was extinguished first. I note that for the Tenant's right to be extinguished first, the Landlord would have needed to offer the Tenant two opportunities for a move-in inspection, including using the RTB-22 form for the final opportunity, and the Tenant would have needed to fail to participate on both occasions. I do not find this to have been the case. Therefore, I will proceed with determining whether the Tenant is entitled to the return of double the security deposit.

Pursuant to section 38 of the Act, a landlord must (a) repay a security deposit to the tenant with interest or (b) make an application for dispute resolution claiming against the deposit, within 15 days after the later of:

- the tenancy end date, or
 - the date the landlord receives the tenant's forwarding address in writing,
- unless the landlord has the tenant's written consent to keep the deposit or a previous order from the Residential Tenancy Branch.

I find this tenancy ended by April 3, 2022.

I accept the Tenant's evidence that he mailed a forwarding address letter to the Landlord on May 21, 2022. I find the Landlord acknowledged receipt of this letter. Pursuant to section 90(a) of the Act, I find the Landlord is deemed to have received the Tenant's forwarding address in writing on May 26, 2022, or the fifth day after mailing.

I find that under section 38(1) of the Act, the Landlord had 15 days from May 26, 2022, or until June 10, 2022, to repay the security deposit to the Tenant in full or make an application to keep the security deposit for a claim other than damage to the rental unit. I find the Tenant did not agree in writing for the Landlord to keep the deposit. I find there is no evidence of any previous orders made by the Residential Tenancy Branch regarding compensation owed by the Tenant or authorization for the Landlord to keep the deposit. I find the Landlord did not return the security deposit in full to the Tenant or make an application by June 10, 2022 as required under section 38(1) of the Act.

Section 38(6) of the Act states that if a landlord does not comply with section 38(1), the landlord may not make a claim against the deposit and must pay the tenant double the amount of the deposit.

Based on the foregoing, I conclude that the Tenant is entitled to a return of double the security deposit.

In addition, section 38 of the Act requires that interest on deposits be paid to a tenant. The interest rate on deposits was 0% from 2021 to 2022, and is 1.95% in 2023. According to Policy Guideline 17, interest is calculated on the original deposit amount, before any deductions are made, and is not doubled. Using the Residential Tenancy Branch Deposit Interest Calculator online tool, I find the Tenant is entitled to \$8.15 of interest on the security deposit from the start of the tenancy to the date of this decision, calculated as follows:

2021 \$925.00: \$0.00 interest owing (0% rate for 16.44% of year)
2022 \$925.00: \$0.00 interest owing (0% rate for 100.00% of year)
2023 \$925.00: \$8.15 interest owing (1.95% rate for 45.20% of year)

Pursuant to section 38 of the Act, I order the Landlord to pay the Tenant \$1,858.15 (or $\$925.00 \times 2 + \8.15) for the return of double the security deposit plus interest.

2. Is the Tenant entitled to compensation of 12 months' rent?

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.

Section 49(1) defines a "landlord" as an individual who, at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years and holds not less than 1/2 of the full reversionary interest.

Section 49(1) further defines an individual's "close family member" to be the individual's parent, spouse, or child, or the parent or child of that individual's spouse.

I have reviewed a copy of the Two Month Notice and find that it was a valid notice to end tenancy in form and content under section 52 of the Act. I find this notice is signed by the Landlord, gives the address of the rental unit, provides an effective date, states the grounds for ending the tenancy, and is in the approved Residential Tenancy Branch form. I note I do not find a failure to specify which person is moving to invalidate the Two Month Notice under section 52 of the Act.

I note the effective date of the Two Month Notice does not comply with section 49(2) of the Act. If rent is due on the first day of the month, the automatically corrected effective date to give the Tenant two clear months would have been April 30, 2022 pursuant to section 53 of the Act. I do not find this to invalidate the Two Month Notice.

Based on the foregoing, I find that the Two Month Notice was a valid and effective legal document signed by the Landlord.

The Landlord argued during the hearing that the parties' tenancy had ended by mutual agreement. However, I find the text messages submitted by the Landlord show that the parties were in discussions and expected to sign something in writing to confirm when and how the tenancy would end. I also find the Tenant had made it clear in the text messages that it was not a mutual agreement to end tenancy. I find that if the parties had mutually agreed to end their tenancy via text messages, the Landlord would not have needed to serve the Two Month Notice.

I find the Landlord served the Two Month Notice on the Tenant in person on February 3, 2022. I find the Tenant was given last month's free rent in accordance with the Two

Month Notice. I find the Tenant did not dispute the Two Month Notice and moved out of the rental unit by the stated effective date. Therefore, I find the parties' tenancy was ended pursuant to the Two Month Notice, rather than by a mutual agreement in writing.

In this application, the Tenant seeks 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.

I find the stated purpose of the Two Month Notice was: "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)".

I find the Landlord did not accomplish the stated purpose of the Two Month Notice beginning within a reasonable period after the effective date of the Two Month Notice and for at least six months' duration.

I find it is undisputed that the rental unit was not occupied by the Landlord or a “close family member” of the Landlord. I find the Landlord’s sister, who occupied the rental unit for one month, does not qualify as a close family member of the Landlord.

Under section 51(3) of the Act, a landlord may be excused from paying compensation to the tenant if there were “extenuating circumstances” that “prevented” the landlord from accomplishing the stated purpose of the notice to end tenancy, as follows:

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director’s opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), 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 further describes extenuating circumstances as follows:

G. EXTENUATING CIRCUMSTANCES

The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.

These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner’s control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.

- A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.
- A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.

In this case, I find the Landlord was upfront with the Tenant about his intentions for his sister move into the property.

However, I find the Landlord knew or ought to have known that moving his sister into the property was not a valid reason for evicting the Tenant under the Act or issuing the Two Month Notice.

I find the Landlord knew that a sibling would not qualify as a close family member since there was no box for this option on page 2 of the Two Month Notice.

Furthermore, page 4 of the Two Month Notice reads as follows:

5. YOU MAY BE ENTITLED TO ADDITIONAL COMPENSATION

After you move out, if your landlord does not take steps toward the purpose for which this Notice was given within a reasonable period after the effective date of this Notice, your landlord must compensate you an amount equal to 12 months' rent payable under your current tenancy agreement.

You must apply to the Residential Tenancy Branch to be awarded this compensation. Your landlord may be excused from paying this amount if there

were extenuating circumstances that prevented your landlord from accomplishing the purpose for ending your tenancy or using the rental unit for that purpose for at least 6 months.

(emphasis underlined)

I find that despite these warning signs, the Landlord signed and issued the Two Month Notice, a valid legal document, in order to have the Tenant move out of the rental unit.

I find the Landlord could have sought information or advice to understand his rights and obligations under the Act before issuing the Two Month Notice, but chose not to do so.

Furthermore, I find the Landlord's evidence was that his sister only occupied the rental unit for approximately one month.

Based on the foregoing, I am unable to conclude that there were extenuating circumstances which "prevented" the landlord from accomplishing the stated purpose of the Two Month Notice, such that the Landlord may be excused from paying compensation to the Tenant.

Pursuant to section 51(2) of the Act, I order the Landlord to pay 12 months' rent to the Tenant, or $\$1,850.00 \times 12 \text{ months} = \$22,200.00$.

I note the Tenant requested reimbursement of the filing fee during the hearing. However, I do not find the Tenant to have included a claim for reimbursement of the filing fee in this application. Under Rule 2.2 of the Rules of Procedure, the claim is limited to what is stated in the application.

Therefore, the total Monetary Order granted to the Tenant is calculated as follows:

Item	Amount
Return of Double the Security Deposit ($\$925.00 \times 2$)	\$1,850.00
Interest on Security Deposit	\$8.15
Compensation of 12 Months' Rent ($\$1,850.00 \times 12 \text{ months}$)	\$22,200.00
Total Monetary Order for Tenant	\$24,058.15

Conclusion

The Tenant's claims for return of the security deposit and compensation of 12 months' rent are successful.

Pursuant to sections 38 and 51 of the Act, I grant the Tenant a Monetary Order in the amount of **\$24,058.15**. 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: June 14, 2023

Residential Tenancy Branch