



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Landlord: **MNDL-S, FFL**

Tenant: **MNETC, FFT, MNSDB-DR, FFT**

### Introduction

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

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*.
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*.
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

This hearing also dealt with two applications by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

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

- An order requiring the landlord to reimburse the tenant for the filing fees pursuant to section 72 in the total amount of \$200.00.

Both parties attended and were given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The parties are referenced in the singular.

#### *Service*

The parties acknowledged service by the other party of documents.

I find each party served the other party in compliance with the Act.

#### *Settlement Discussions*

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. I informed both parties that I could not provide legal advice to them. I informed them I make my Decision after the hearing and not during the hearing.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

The Arbitrator assisted the parties in efforts to settle the matter. Settlement discussions were unsuccessful, and the hearing continued.

#### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for compensation and authorization to apply the security deposit to the award?

Is the tenant entitled to a return of the security deposit? Is the tenant entitled to compensation of 12 months rent?

Is either party entitled to reimbursement of the filing fee?

### Background and Evidence

#### *Tenancy*

The unit is a house rented by the tenant.

The parties agreed on the background of the tenancy. The tenancy started in 2019. At the beginning, the tenant paid a security deposit and pet deposit each in the amount of \$425.00 for total deposits of \$850.00. The landlord returned part of the deposits and a balance of \$500.00 is retained by them.

The landlord purchased the unit, and a new agreement was signed on Apr 15, 2021.

When the tenant moved out, they were paying rent of \$862.75.

#### *Two Month Notice*

The parties agreed a Two Month Notice in the RTB form was given by the landlord to the tenant dated July 28, 2022, requiring the tenant to move out by the effective date of September 30, 2022.

The reason given in the Notice was that the rental unit will be occupied by child of landlord or landlord's spouse. The landlord explained they intended their adult son J.B. would move into the unit. He had finished university and was looking for work in their area.

#### *Condition Inspection Report*

No condition inspection reports on moving in or moving out were submitted.

The tenant had moved in before the landlord purchased the property. They were not given a report.

On moving out, the parties discussed doing a walk through, but none was scheduled.

### *Forwarding Address*

The parties agreed the tenant provided their forwarding address on November 24, 2022, to the landlord in compliance with the Act.

### *Claims*

The claims are:

1. Landlord's claim for compensation
  - 1.1. Tenant's reply
2. Tenant's claim for return of security deposit
  - 2.1. Landlord's reply
3. Landlord's Evidence – Two Month Notice
  - 3.1. Tenant's claim for 12 months compensation

#### *1. Landlord's claim for compensation*

The landlord testified as follows.

The tenant moved out of the house on September 30, 2022. The parties agreed the tenant could store their possessions in the yard during October 2022. The tenant paid rent for October 2022 and moved everything away during that month.

As the house itself was vacant, the landlord started doing some repairs, renovations and cleaning. They discovered the unit was in poor condition and considerable work was required. For example, the hot water tank had leaked, rotting floorboards and joists. The tank and toilet were replaced, among other things. They filled "thousands" of screw and nail holes. The repairs were finished by the end of September 2022.

The landlord's claim is for \$500.00 compensation for about 80 or more hours spent cleaning the unit during September 2022. The landlord stated they mostly did the work themselves. They submitted no receipts or ledger of their time. They submitted photos showing a unit in need of cleaning - a dirty fridge and stove and some small piles of debris. The windows were dirty, and everything needed to be wiped.

### *1.1. Tenant's reply*

The tenant testified as follows.

Some cleaning was necessary after they moved out, but not in the amount of time claimed worth \$500.00. The unit was in bad condition when they moved in, and the landlord had done nothing to repair or maintain.

The tenant acknowledged the fridge and stove needed cleaning, and they left some debris. They acknowledged they did not thoroughly clean the unit before they left.

### *2. Tenant's claim for return of security deposit*

The tenant claimed the landlord is required to pay double the security deposit as no condition inspection report was conducted on moving out. The landlord did not schedule an inspection or give the tenant final notice.

### *2.2 Landlord's reply*

The landlord said they asked the tenant to schedule an inspection on moving out. The tenant declined because they were busy moving. The landlord should not have to pay double the security deposit in the circumstances.

### *3. Landlord's Evidence – Two Month Notice*

The landlord testified to the following sequence of events:

Date	Event
July 28, 2022	Two Month Notice served
September 30, 2022	Tenant moved out of house

October 2022	Landlord carried out repairs and renovations
October 31, 2022	Tenant moved all possessions away
November 2, 2022	Son J.B. moved into unit with family
November 22, 2022	Son J.B. accepted employment in another city
January 15, 2023	Son J.B. moved out of unit
January 15, 2023	Unit advertised for rent for \$2,100.00
February 18, 2023	Unit rented for \$2,000.00

The landlord stated their son J.B. was looking for work. Shortly after he moved in, on November 22, 2022, the son accepted employment.

The son J.B. submitted a letter as evidence. He said his intentions were to live in the unit after university to be close to his family and to look for a job. He did not intend to live in the unit for only a short period. The job offer in another geographical area was unexpected and welcome.

Accordingly, the son J.B. moved out as stated in the above timeline.

The landlord claimed the employment accepted by the son requiring him to move was extenuating circumstances. They should not have to pay 12 months rent as compensation.

### *3.2. Tenant's claim for 12 months compensation*

The tenant testified as follows.

The purpose of evicting them was to improve the house and rent it for more money. The tenant paid \$862.75 rent, and 4 months after vacating, the landlord rented the unit for more than twice the rent, \$2,000.00.

There were no extenuating circumstances. The landlord knew their son was looking for work and may find work elsewhere. The son J.B. decided to accept a job which required him to move.

### Analysis

The parties submitted conflicting testimony in key aspects of this claim. I consider all the documentary evidence and the testimony in reaching my Decision. However, I do not repeat all the facts and arguments claimed by each side. Only relevant, admissible evidence is considered. The principal aspects of the claim and my findings around each are set out below.

### *Standard of Proof*

The standard of proof in a dispute resolution hearing is on a balance of probabilities. This means that it is more likely than not that the facts occurred as claimed.

The responsibility to prove their case is on the person making the claim. In this case, the landlord must prove their claim.

The applicant must prove four items:

1. Did the other party fail to comply with their legal obligations?
2. If yes, did loss or damage result?
3. What is the value of this loss or damage?
4. Was there an effort to reduce losses?

If the parties provide equally believable evidence, the applicant has not proven their claim.

### *The Act*

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

Section 37(2)(a) of the Act requires that a tenant "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear" when they vacate.

*1. Landlord's claim for compensation*

The landlord claimed \$500.00 compensation for cleaning.

It is up to the landlord to support their claim with documentary evidence. I have no doubt that the landlord spent considerable time getting the unit back into condition for their son to move in based on the photographs submitted.

However, the landlord did not produce any log or contemporaneous proof of time spent. The time is an estimate only.

As well, the tenant is required to leave the unit reasonably clean. This does not mean the unit must be perfectly cleaned.

Finally, the landlord did considerable repairs and renovations after the tenant moved out and before their son moved in which involved construction debris and cleaning. This cleaning is not the responsibility of the tenant.

*Policy Guideline 16: Compensation for Damage or Loss* allows me to award compensation in situation where the value is not straightforward.

I have no doubt that the landlord spent some time cleaning areas that were the tenant's responsibility.

I therefore find this is an appropriate situation for nominal damages which I award in the amount of \$350.00.

*2. Tenant's claim for return of security deposit*

The tenant requested a Monetary Order for the doubling of the security deposit

Pursuant to sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security and pet damage deposits if they do not comply with the Act and Residential Tenancy Regulation (the "Regulations").

Section 35 of the Act requires the parties to inspect the condition of the rental unit before a new tenant moves in. The landlord must offer the tenant at least two



opportunities for the inspection. The landlord may make the inspection without the tenant if the tenant does not attend.

Section 19 of the Residential Tenancy Regulation ("Regulation") requires that condition inspection reports must be in writing. Section 20 of the Regulation requires detailed, specific information to be included in the condition inspection reports.

Both parties agreed that no written condition inspection reports were completed for this tenancy on move-out and none were provided for this hearing.

I find that the landlord extinguished their right to claim against the tenant's security and pet deposits for failure to complete a move-out condition inspection report for this tenancy under section 36.

The parties agreed the tenant provided their forwarding address on November 24, 2022 to the landlord in compliance with the Act.

As the landlord did not return the deposits within 15 days, the tenant is entitled to a doubling of the security deposit.

Accordingly, I award the tenant:

ITEM	AMOUNT
Security and pet deposits	\$850.00
Doubling	\$850.00
(Less partial return)	(\$350.00)
(Less award for cleaning)	(\$350.00)
<b>Award to Tenant</b>	<b>\$1,000.00</b>

### *3. Landlord's Evidence – Two Month Notice*

#### *3.1. Tenant's claim for 12 months compensation*

A landlord may end a tenancy in certain situations.

According to sections 49 and 49.1 of the Act, the landlord may give the tenant a Two Month Notice if the landlord or a close family member (such as parents),

wants to occupy the rental unit. The landlord must follow through with the reason for the eviction.

If the tenant's unit is not used for the stated purpose for at least six months, beginning within a reasonable period after the notice takes effect, section 51(2)(b) says the landlord may owe the tenant 12 months rent as compensation.

Section 51(3) states the landlord may be excused from paying the tenant the amount required by section 51(2)(b) if extenuating circumstances prevented the landlord from using the rental unit for the purpose stated in the notice during the required period.

Residential Tenancy Branch Policy Guideline 50 sets out guidelines and examples for determining when extenuating circumstances exist. The examples include

- A landlord ends a tenancy so their parent can occupy the rental unit, but and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit, but the rental unit is destroyed in a wildfire.

The guideline gives these examples of situations where there were probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.

The common theme in these examples is that an extenuating circumstance is based on an event outside landlord's control. An extenuating circumstance does not exist if the landlord had decision-making authority or control over the event.

### *Findings*

In this case, I find the landlord has not proven any extenuating circumstances for the purpose of section 51(3).

The landlord's son was unemployed and looking for a job before he moved in. Within a few weeks of moving in, he found work and decided to move. He moved out 2.5 months after moving in. I accept the son intended to live in the unit only until he got work.

At all times, the landlord's son had control over whether he occupied the unit for 6 months or not. Merely because he changed his mind, does not mean extenuating circumstances were present.

To refer again to the example in the guideline. The intended occupant, the son J.B., did not experience any kind of incapability, inability or injury making it impossible for him to continue living in the unit. The son J.B. simply accepted a job and decided to live elsewhere.

The landlord argued they should not be penalized for their son getting employment elsewhere. I disagree with this argument.

Ending a tenancy is a traumatic and destabilizing event for a tenant and should not be undertaken lightly. Section 51 of the Act is meant to discourage landlords from ending tenancies where a landlord could change their mind. The same principle should be applied to the intended occupant of the rental unit, the close family member.

The circumstances as I understand them are not what is meant by extenuating circumstances.

*Findings*

The Act states that if a tenant is given a notice to end tenancy, a landlord must pay the tenant an amount that is equal to 12 times the monthly rent if steps have not been taken within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy, or the rental unit is not used for that stated purpose for at least six months' duration unless there are extenuating circumstances.

As I have found the landlord has not complied with the Act and has not established extenuating circumstances, I find that under RTA section 51(2), the tenant is entitled to a monetary award as requested.

I find that twelve months rent compensation is \$10,353.00. I award the tenant a monetary award in this amount.

*Filing fees*

The tenant is entitled to recover the filing fee for two applications. I accordingly award the tenant \$200.00 under this heading.

*Summary of Award*

I award the tenant the following:

<b>ITEM</b>	<b>AMOUNT</b>
Security and pet deposits	\$850.00
Doubling	\$850.00
(Less partial return)	(\$350.00)
(Less award for cleaning)	(\$350.00)
<b>Award to Tenant - Deposits</b>	<b>\$1,000.00</b>

I also award the tenant the following:

ITEM	AMOUNT
12 months' rent as compensation	\$10,353.00
Filing fees	\$200.00
<b>TOTAL</b>	<b>\$10,553.00</b>

The total of both awards is:

ITEM	AMOUNT
Award to Tenant - deposits	\$1,000.00
Award to Tenant – 12 months' rent and filing fees	\$10,553.00
<b>TOTAL MONETARY ORDER</b>	<b>\$11,553.00</b>

I award the tenant a Monetary Order of **\$11,553.00**.

#### Conclusion

I grant the tenant a Monetary Order in the amount of **\$11,553.00**. This Monetary Order must be served on the landlord. The Monetary Order may be filed and enforced 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: August 30, 2023

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Residential Tenancy Branch