



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL / MNDCT, MNETC, FFT

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Landlord requests the following:

- A Monetary Order for unpaid rent under sections 26 and 67 of the Act;
- A Monetary Order for damage to the rental unit under section 67 of the Act;
- A Monetary Order for loss under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement, under to section 67 of the Act;
- Authorization to retain all, or a portion, of the security deposit under section 38 of the Act; and
- To recover the filing fee for this Application from the Tenants under section 72 of the Act.

The Tenants request the following:

- A Monetary Order for compensation under sections 51(1) and 67 of the Act;
- Compensation of twelve months' rent under section 51(2) of the Act because their tenancy ended due to a Two Month Notice to End Tenancy for Landlord's Use of Property and the Landlord did not use the rental unit for the stated purpose; and
- To recover the filing fee for this Application from the Landlord under section 72 of the Act.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the Materials) and evidence in relation to the other's Application. Based on their testimonies I find that each party was served with these Materials and evidence as required under sections 88 and 89 of the Act.

Preliminary Issue – Amendment

The Landlord applied for compensation of \$100.00 for loss under the Act, Regulation, or tenancy agreement under section 67 of the Act, and confirmed this request was for recovery of the filing fee for their Application.

Since the Landlord has applied under a separate claim within their Application for recovery of the filing fee under section 72 of the Act, using my authority under section 64(3)(c) of the Act I amend the Landlord's Application to remove the claim for \$100.00 under section 67 of the Act so this issue is not addressed twice and the potential for double compensation is avoided.

Issues to be Decided

1. Is the Landlord entitled to a Monetary Order for unpaid rent?
2. Is the Landlord entitled to a Monetary Order for damage to the rental unit?
3. Is the Landlord entitled to retain all, or a portion of the Tenants' security deposit?
4. Are the Tenants entitled to a Monetary Order for compensation of one month's rent under section 51(1) of the Act?
5. Are the Tenants entitled to a Monetary Order for compensation equivalent to twelve months' rent under section 51(2) of the Act?
6. Are either party entitled to recover the cost of the filing fee for their Applications?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on February 1, 2022 for a fixed term ending January 31, 2023 and continuing on a month-to-month basis thereafter.

- The Tenants vacated the rental unit on June 2, 2023.
- Rent was \$1,600.00 per month due on the first day of the month throughout the tenancy.
- A security deposit of \$800.00 was paid by the Tenants which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.

Two Notices to End Tenancy were entered into evidence, which are summarized as follows:

- A Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) dated April 26, 2023 with an effective date of June 30, 2023.
- A One Month Notice to End Tenancy for Cause (the One Month Notice) dated May 19, 2023 with an effective date of June 30, 2023.

The Tenants disputed both the One Month Notice and the Two Month Notice, though ultimately their application was withdrawn with the consent of both parties before the hearing took place. The file number for the Tenants' previous application is included on the front page of this Decision.

Both Parties' Claims Regarding Rent

The Landlord testified as follows. They issued the One Month Notice to the Tenants after the Two Month Notice had been issued when they discovered a mirror and a cabinet had been attached to the wall of the rental unit without their consent. The Tenants also installed a camera in the rental unit which recorded private conversations between the Landlord and their agent during an inspection.

The Landlord argued the One Month Notice replaced the Two Month Notice, so the Tenants were still obligated to pay the full month's rent due June 1, 2023. The Tenants paid only \$105.21 for two days of rent for the month of June 2023, so the Landlord seeks the remainder of the rent in the amount of \$1,494.79.

The Landlord stated they considered the Two Month Notice was replaced due to what they deemed violations of the tenancy agreement by the Tenants. They acknowledged receiving the Tenants' early notice to end tenancy and forwarding address via registered mail on May 23, 2023.

The Tenants testified as follows. They did not believe the One Month Notice replaced the Two Month Notice. They believe the tenancy was ended under the Two Month Notice and therefore they could provide ten days notice to end the tenancy early, before the effective date of that notice, and still receive one month's rent in compensation. They argued the Landlord issued the One Month Notice to avoid paying this compensation.

The Tenants argued the mirror and cabinet were hung with damage-free adhesive strips and they were compliant with bylaws regarding any alterations to the rental unit. The security camera was a webcam type device and was not mounted to the walls of the rental unit.

They had disputed both Notices, but owing to the frequent communications from the Landlord, which they found draining, they opted to move out of the rental unit instead of continuing the dispute to the hearing, and provided early notice to end tenancy to the Landlord dated May 17, 2023, effective June 2, 2023.

The Tenants prorated the two days rent due June 1, 2023 accordingly and paid the Landlord \$105.21, provided their forwarding address and requested \$1,600.00 by the last day of the tenancy, as well as their security deposit, neither of which were received.

Landlord's Claim for Damage to the Rental Unit

The Landlord testified they seek \$260.00 for a damaged window covering. They purchased a replacement from Home Depot.

The Tenants drew my attention to the condition report entered into evidence which made reference to damage to the blinds at the move-in and that there were no figures to support the \$260.00 claimed by the Landlord.

Tenants' Claim for Twelve Months' Rent Compensation

The Landlord testified their son moved into the rental unit in the first half of June 2023 and he still lives there. I was referred to copies of utility bills and bank statements in the Landlord's son's name entered into evidence.

The Landlord acknowledged listing the rental unit for sale, but testified the listing expired in December 2023 and the rental unit did not sell. They stated they are fully aware of the requirement to occupy the rental unit as stated.

The Tenants testified as follows. As there are two boxes checked on the Two Month Notice for both the Landlord and the child of the Landlord, they were under the impression both had to occupy the rental unit.

The Tenants testified they received mail for the Landlord's son at the rental unit during the tenancy on two occasions and were asked to notify the Landlord so the mail could be collected. They noted the rental unit was listed for sale soon after they moved out.

The Tenants argued the electricity usage seen on the utility bills was low.

In response to the Tenants' testimony, the Landlord testified that as their son was listed on the title as an equal joint owner of the rental unit, they selected both boxes, since their son is the landlord too. They stated that as their son works part-time and is a student, they do not cook inside the rental unit often, so electricity usage is low.

The Landlord acknowledged their son could get mail at the rental unit during the tenancy, particularly from the Government as they were on the title of the property, so had asked the Tenants to let them know if any mail came for them, though they did not recall the number of times this occurred.

Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that 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.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. One such circumstance in which a tenant may withhold rent is when a Notice to End Tenancy for Landlord's Use of Property under section 49 is received, as set out in section 51.4(2) of the Act, which states the tenant may withhold the last month's rent in this situation.

It was undisputed that the Tenants paid the equivalent of two days' rent to the Landlord and the tenancy ended on June 2, 2023, and that the Two Month Notice had been issued to the Tenants before the One Month Notice. The Landlord argued the One

Month Notice “replaced” the Two Month Notice, so there was no obligation to compensate the Tenants one month’s rent.

As set out in Policy Guideline 11 - Amendment and Withdrawal of a Notice to End Tenancy, a landlord or tenant can not unilaterally withdraw a Notice to End Tenancy. Additionally, Policy Guideline 11 confirms that a Notice to End Tenancy may only be withdrawn before the effective date with the consent of the recipient. I find this is a reasonable and correct principle to apply in this case. There are no provisions within the Act for one notice to end tenancy to be replaced by another from a different section of the Act. Were a landlord to be permitted to “replace” a Two Month Notice with a One Month Notice, there would be a clear incentive for bad actors to do so to avoid the compensation obligations associated with section 49 of the Act.

Whilst the Tenants disputed both Notices and the application was ultimately withdrawn, nothing before me indicated there was an agreement for either the One Month Notice or the Two Month Notice to be withdrawn, just that the parties agreed the hearing was no longer required as the Tenants had vacated the rental unit.

Given the above, I find the tenancy was ended under the Two Month Notice and therefore, the Tenants were entitled to provide early notice to end the tenancy, per section 50(1)(a) of the Act, and were not obligated to pay rent for the entire month of June 2023. Therefore, the Landlord’s claim for unpaid rent under section 67 of the Act is dismissed without leave to reapply.

Is the Landlord entitled to a Monetary Order for damage to the rental unit?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord seeks \$260.00 for damage to a window covering. It was not clear to me the nature or severity of the alleged damage to the window covering or if the replacement of the entire covering was needed, or if a repair was possible. I found the Landlord's testimony in this regard to be quite vague and unconvincing.

Whilst the move-out condition report notes "screen door in the middle damaged" I note the Tenants state on the report they disagree with the contents of the report, and in any case, I am not satisfied on a balance of probabilities the reference to a screen door being damaged is sufficient evidence of damage to a window covering.

Additionally, the Landlord did not submit into evidence any proof of the cost of repair the damage, such as a receipt or invoice, or that the purported damage was repaired at all.

Given the above, I find the Landlord has failed to establish their claim for compensation for damage to the rental unit under section 67 of the Act and I dismiss their Application without leave to reapply.

Is the Landlord entitled to retain all, or a portion of the Tenants' security deposit?

As stated above, I have dismissed without leave to reapply the Landlord's monetary claims against the Tenants so shall not be authorizing the Landlord to retain any amount from the security deposit under sections 38 or 72(2)(b) of the Act.

Given that the Tenants participated in the inspections of the rental unit at the start and end of the tenancy, I find the Tenants have not extinguished their right to the return of the security deposit under sections 24 of 36 of the Act. Therefore, the Tenants are entitled to the return of the security deposit, plus interest, though I must consider if the Landlord is obligated to pay double the deposit to the Tenants.

Section 38(1) of the Act requires a landlord to either repay the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within fifteen days of the tenancy ending and receiving the tenant's forwarding address in writing, whichever is later.

Section 38(6) of the Act states that if a landlord does not take either of the courses of action set out in section 38(1) of the Act, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

I find the Tenants provided their forwarding address to the Landlord on May 17, 2023 via registered mail and the Landlord received this on May 23, 2023, per the Landlord's testimony. I find the tenancy ended on June 2, 2023 under the Two Month Notice and the Landlord submitted their Application claiming against the security deposit on June 12, 2023. Therefore, I find that the Landlord made their Application within the fifteen day period as stipulated by section 38(1) of the Act, and the Tenants are not entitled to double the security deposit.

Given the above, I dismiss without leave to reapply the Landlord's Application to retain the Tenants' security deposit. Under section 67 of the Act, I order the Landlord to return the security deposit, plus interest to the Tenants. Per section 4 of the Regulation, interest on security deposits is calculated at 4.5% below the prime lending rate. The amount of interest owing on the security deposit was calculated as \$15.45 using the Residential Tenancy Branch interest calculator using today's date.

Are the Tenants entitled to a Monetary Order for compensation of one month's rent under section 51(1) of the Act?

Section 51(1) of the Act states that a tenant who receives a notice to end a tenancy under section 49 for landlord's use of property, 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 previously stated in this Decision, I have found the tenancy ended under the Two Month Notice under section 49(3) of the Act, therefore the Tenants are entitled to receive from the Landlord compensation of one month's rent.

It was undisputed by the parties that the Tenants vacated the rental unit on June 2, 2023, had paid rent on a prorated basis until this date, and that the Tenants had not withheld any amount from rent, nor had the Landlord reimbursed the Tenants in any way.

Given the above, I grant the Tenant's Application and order the Landlord to pay the Tenants \$1,600.00 under sections 51(1) and 67 of the Act.

Are the Tenants entitled to a Monetary Order for compensation equivalent to twelve months' rent under section 51(2) of the Act?

Section 49(3) of the Act allows a landlord to end a tenancy if they or a close

family member intends, in good faith, to occupy the rental unit. Section 51(2) of the Act states that if a tenant is given a notice to end tenancy under section 49 of the Act, a landlord must pay the tenant an amount that is equal to twelve times the monthly rent if the landlord does not establish the following:

- That the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice to end tenancy; and
- That the rental unit was used for the stated purpose for ending the tenancy for at least six months, beginning within a reasonable period after the effective date of the notice to end tenancy.

As set out in Policy Guideline 2A - Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, the onus is on the Landlord to prove on a balance of probabilities that they accomplished the purpose for ending the tenancy and that they used the rental unit for the stated purpose for at least six months. Additionally, as confirmed in Policy Guideline 50 - Compensation for Ending a Tenancy, if this is not established, the Landlord must compensate the Tenants, in accordance with section 51(2) of the Act.

In this case, I find the Two Month Notice has been quite heavily modified and the Landlord has crossed out both “parent” and “spouse”, leaving only “child”, in addition to the Landlord as the close family member who will occupy the rental unit in the first option on the form. They have also selected both “the landlord or the landlord’s spouse” and “the child of the landlord or landlord’s spouse” as the parties who will occupy the rental unit, though crossed out any reference to the landlord’s spouse. The Landlord has also added on a note indicating they may be forced to sell the rental unit, depending on their financial situation.

I accept the Landlord’s testimony that their son is also an owner of the rental unit, therefore I find they meet the definition of “landlord” per section 1 of the Act. I found nothing before me to indicate there was any intentions from the Landlord to deceive the Tenants or conceal their intentions by selecting two boxes on the Two Month Notice. As such, I will just be considering the Landlord’s son’s purported occupancy of the rental unit when determining if the stated purpose of the Two Month Notice was accomplished.

The Landlord testified their son occupied the rental unit from the first half of June 2023, and continued to occupy the rental unit at the date of the hearing. If the Landlord is able to prove on a balance of probabilities that this occurred, they will not have to compensate the Tenants under section 51(2) of the Act. If the Landlord fails to establish

their son's occupancy of the rental unit as stated, the Tenants will be awarded the requested compensation.

I found the Landlord's testimony to be reasonably detailed, consistent, and to be supported by documentary evidence, namely utility bills and bank statements showing the Landlord's son's name. Overall, I found the Landlord's testimony to be credible, persuasive and I afford it significant weight.

Though the Tenants argued the Landlord's son had received mail at the rental unit on two occasions during the tenancy, which lasted well over one year, I do not find this diminishes the credibility of the Landlord's evidence or testimony.

I find that two pieces of mail is not significant, or indicative the Landlord's son received their bank statements or utility bills to the rental unit prior to the end of the tenancy. Based on the Landlord's evidence, I conclude that the Landlord's son received at least six pieces of mail at the rental unit soon after the tenancy ended, namely utility bills and bank statements. From this I find it more likely that not that the Landlord's son took steps to notify their bank and BC Hydro of a change in address after June 2, 2023.

Furthermore, I note the first BC Hydro bill covers the billing period from June 3, 2023, which is the date after the Tenants vacated the rental unit, which I find is evidence that supports the notion that the Landlord's son occupied the rental unit as stated by the Landlord. Though the Tenants argued the BC Hydro usage was low, I do not find the figures on the bills particularly indicative of a lack of occupancy.

Though it was undisputed the rental unit was listed for sale, nothing before me indicated it was sold. I should note that there is nothing that prevents a landlord from listing a rental unit for sale. This issue would of course be of great relevance if the unit was sold, and the new owners occupied the rental unit before the six month period established in section 51(2) of the Act was reached.

Considering the above, I find on a balance of probabilities that the Landlord has established the stated purpose on the Two Month Notice was accomplished within a reasonable amount of time from the effective date, and for a period of at least six months.

Therefore, the Landlord is not required to compensate the Tenants under section 51(2) of the Act. Therefore, the Tenants' Application under section 51(2) of the Act is dismissed without leave to reapply.

Are either party entitled to recover the cost of the filing fee for their Applications?

As the Landlord's Application was not successful, they must bear the cost of the filing fee.

Given the Tenants were at least partially successful in their Application, I authorize the Tenants to recover the filing fee in the amount of \$100.00 from the Landlord under section 72 of the Act.

Conclusion

The Landlord's Application is dismissed without leave to reapply.

The Tenants' Application for compensation under section 51(1) of the Act is granted and their Application for compensation under section 51(2) of the Act is dismissed without leave to reapply.

The Tenants are issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Landlord. It is the Tenants' obligation to serve the Monetary Order on the Landlord. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	Amount
Return of security deposit, plus interest	\$815.45
One month's rent compensation under section 51(1) of the Act	\$1,600.00
Filing fee	\$100.00
Total	\$2,515.45

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 27, 2023

Residential Tenancy Branch