



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNSD; MNETC, FFT**

Introduction

This hearing dealt with two applications 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 one month's rent as compensation under section 51(1) and 67.
- A Monetary Order and for twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67.
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Preliminary Issue - Service

The tenant testified she served the landlord by registered mail on November 2, 2023 with the Proceeding Package and evidence thereby effecting service under the Act five days after mailing on November 7, 2023. The tenant provided copies of the receipts including the tracking numbers in support of service.

Further to the tenant's uncontradicted credible testimony and supporting documents, I find the tenant served the landlord in compliance with the Act on November 7, 2023.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the return of the security deposit, compensation for one month's rent as the landlord issued a Two Month Notice under section 51(1), compensation of 12 months rent for failure of the landlord to occupy the unit as stated in the Two Month Notice, and reimbursement of the filing fee?

Background and Evidence

The tenant provided uncontradicted testimony with supporting documents. The landlord did not attend the hearing although served.

This is an application by the tenant for the following:

	ITEM	AMOUNT
1.	Security deposit – doubling ($\$453.70 \times 2$) + interest of \$105.69	\$1,013.09
2.	One month's rent as compensation under section 51(1)	\$840.00
3.	Twelve months' rent as compensation under section 51(2)	\$10,080.00
4.	Reimbursement of the filing fee	\$100.00
	TOTAL	\$12,033.09

Tenancy

The tenant testified the 29-year tenancy began on October 1, 1994. The landlord purchased the rental unit in 2016. Rent was \$840.00 payable on the first of the month. The rental unit is a house an acreage.

No condition inspection report on move out took place.

Two Month Notice

The landlord served the tenant with a Two Month Notice dated November 21, 2022, effective January 31, 2023. The reason provided in the Two Month Notice for the eviction is that the father or mother of landlord's spouse moving in. The tenant submitted a copy of the Two Month Notice which is in the standard RTB form.

The tenant filed a dispute to the Two Month Notice which resulted in an Order of Possession dated April 12, 2023.

The tenant moved out on April 21, 2023.

The tenant did not receive one month's rent as compensation under section 51(1).

Security deposit

The tenant provided a security deposit of \$453.70 which the landlord holds without the tenant's authorization.

The tenant testified she sent the landlord her forwarding address in writing by registered mail on April 26 and May 29, 2023, thereby effecting service five days later. The tenant provided copies of the receipts and tracking numbers in support of service.

The landlord has not applied to keep the security deposit, nor has he returned the deposit.

Twelve Months Rent as Compensation

The tenant testified that she drove by the rental unit once a day after she moved out as she had horses boarding nearby. She observed that no one occupied the unit after she moved out. The tenant submitted supporting photographs showing a vacant unit.

On November 18, 2023, seven months after she moved out, tenants moved into the rental unit who are not the parents of the landlord or the landlord's spouse.

The tenant testified she conducted inquiries of the estranged spouse of the landlord, A.R. and was informed no one occupied the unit until it was rented on November 18, 2023. The tenant also testified she confirmed the vacancy with neighbours who she had know throughout her 29-year occupancy

Analysis

The tenant provided uncontradicted credible testimony well supported by documentary evidence. I accept her evidence in all respects.

Standard of Proof

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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the respondent party (the landlord) to the tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the applicant (tenant) proven the amount or value of their damage or loss?
4. Has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act.or loss.

I consider each of the above four tests in determining the tenant's claims.

1. Security deposit – doubling ($\$453.70 \times 2$) + interest of $\$105.69$ - $\$1,013.09$

The tenant requested the 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 as well as interest payable under the Act.

I accept the tenant's credible testimony in all aspects and find as follows.

The tenant paid the landlord a security deposit of \$453.70 .

The tenant did not agree that the landlord could withhold any of the security deposit.

The tenant provided her forwarding address by registered mail in compliance with the Act on April 26 and May 29, 2023, effecting service on May 1 and June 3, 2023.

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).

The landlord did not return the security deposit within 15 days of service or apply to keep the deposit. The tenant did not consent that the landlord could retain the security deposit.

The tenant has met the burden of proof under this claim.

Under these circumstances and in accordance with sections 38(6) and 72 of the Act, the tenant is entitled to a monetary order of doubling of the security deposit and interest payable in accordance with the Act in the total amount of \$1,013.09 as claimed.

2. One month's rent as compensation under section 51(1) - \$840.00

Section 51 (1) states a tenant who receives a notice to end a tenancy under section 49 [*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.

I accept the tenant's credible testimony she did not receive one month's rent as compensation which the landlord is required to pay under section 51(1). The tenant has met the burden of proof for this claim.

I find the tenant is entitled to an award in the amount of \$840.00, being one month's rent.

3. Twelve months' rent as compensation under section 51(2)- \$10,080.00

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 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.

I accept the tenant's testimony as supported by documentary evidence. I find the tenant moved out April 21, 2023, and rental unit was vacant until November 18, 2023, when new tenants moved in.

Based on the evidence before me, the testimony of the tenant and on a balance of probabilities, I find that the tenant has established their claim for compensation related to a notice to end tenancy where the landlord did not accomplish the stated purpose or comply with the Act. I find the landlord has not complied with section 51(2).

Therefore, I award the tenant twelve months' rent as compensation under section 51(2) which I find is \$10,080.00.

4. Reimbursement of the filing fee - \$100.00

As the tenant is successful in this application, the tenant is entitled to reimbursement of the filing fee in the amount of 4100.00.

Summary of Award

The tenant is successful in all her claims.

I grant the tenant a Monetary Order of **\$12,033.09** calculated as follows:

	ITEM	AMOUNT
1.	Security deposit – doubling (\$453.70 x 2) + interest of \$105.69	\$1,013.09
2.	One month's rent as compensation under section 51(1)	\$840.00
3.	Twelve months' rent as compensation under section 51(2)	\$10,080.00
4.	Reimbursement of the filing fee	\$100.00
	TOTAL	\$12,033.09

Conclusion

I grant the tenant a Monetary Order in the amount of **\$12,033.09**. **The tenant must serve the Monetary Order 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: December 22, 2023

Residential Tenancy Branch