



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNSD, MNETC, FFT / MNDCT, FFT

### Introduction

The hearing was convened following two applications for dispute resolution (Applications) made by the Tenant under the *Residential Tenancy Act* (the Act), which were joined to be heard simultaneously.

In their first Application, submitted on December 31, 2023, the Tenant requests the following:

- A Monetary Order for the return their security deposit under sections 38 and 67 of the Act;
- A Monetary Order for one month's rent as the tenancy ended under a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) under section 51(1) of the Act; and
- To recover the cost of the filing fee under section 72 of the Act.

In their second Application, submitted on January 15, 2024, the Tenant requests the following:

- A Monetary Order for \$16,200.00 for loss or other money owed under section 67 of the Act; and
- To recover the cost of the filing fee under section 72 of the Act.

The Applicant Tenant attended the hearing. Although I waited until 2:05 PM to enable the Respondent Landlord to connect with this teleconference hearing scheduled for 1:30 PM, the Landlord did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. During the hearing, I also confirmed from

the online teleconference system that the Tenant and I were the only parties who had called into this teleconference.

Rule 7.1 of the *Rules of Procedure* states that a 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 hearing in the absence of that party or dismiss the application with or without leave to reapply.

Accordingly, the hearing proceeded in the absence of any attendance by the Landlord or an agent for the Landlord.

### *Previous Application*

A previous hearing involving the parties took place on July 14, 2023 following a previous application for dispute resolution made by the Tenant.

In the previous application, the Tenant requested the return of their security deposit and the same compensation sought in their second Application, though these issues were severed and dismissed with leave to reapply by the previous arbitrator as they were deemed unrelated to the Tenant's request for compensation under section 51(2) of the Act which was found to be the primary issue raised in the previous application.

The file number for the previous application is include on the front page of this Decision for reference.

### Service of Notice of Dispute Resolution Proceeding and Evidence

The Tenant testified they served the Notice of Dispute Resolution Package (Materials) and evidence for both of their Applications on the Landlord by registered mail to the address for service provided by the Landlord on the tenancy agreement. The Tenant stated they also sent the Materials and evidence to an address for the Landlord's business found through the Better Business Bureau. The Materials and evidence for the first Application were sent on January 5, 2024, and the second Application on January 16, 2024.

The Canada Post receipt and tracking numbers for the packages sent to the Landlord were provided by the Tenant as evidence. The tracking numbers for the packages sent

to the Landlord's address for service are provided on the first page of this Decision. I find that a search of the tracking numbers confirm that both packages were delivered, and the name of the party who signed for the second package matches that of the Landlord.

I am mindful that given the tenancy ended at least a year before the Materials for the Tenant's Applications were sent to the Landlord, it is possible the Landlord's address for service had changed in the interim. However, given a party with the same name as the Landlord signed for the second package, I find that the Landlord could be served at the address provided on the tenancy agreement. Therefore, per sections 71, 88 and 89 of the Act, I find the Tenants' Materials and evidence were sufficiently served to the Landlord for the purposes of the Act.

#### Issues to be Decided

- Is the Tenant entitled to the return of their security deposit?
- Is the Tenant entitled to one month's rent in compensation under section 51(1) of the Act?
- Is the Tenant entitled to the requested Monetary Order?
- Is the Tenant entitled to recover the filing fees for their Applications from the Landlord?

#### Background and Evidence

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

The Tenant confirmed the following regarding the tenancy:

- The tenancy began on September 1, 2020 for a fixed term ending September 1, 2021 and continuing on a month-to-month basis thereafter.
- The tenancy ended on August 31, 2022 under the Notice, a copy of which was entered into evidence.
- Rent was \$2,700.00 per month due on the first day of the month throughout the tenancy.
- A security deposit of \$2,700.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.

The Tenant testified as follows. The Notice was served to them with an effective date of September 30, 2022. The Tenant was able to find a new residence before then, so provided notice to end the tenancy effective August 31, 2022 along with their forwarding address in writing on August 18, 2022. A copy of the email correspondence between the parties was entered into evidence, as was a text message exchange in which the Landlord appears to acknowledge receipt of the Tenant's correspondence.

The Landlord never responded to requests to return the security deposit and the Tenant never provided their consent for the Landlord to keep the deposit, nor were any applications for dispute resolution made by the Landlord claiming against the deposit.

A hearing took place on July 14, 2023 involving the parties and dealt with the Tenant's request for compensation under section 51(2) of the Act. As part of the previous application, the Landlord submitted an affidavit indicating they retained the Tenant's security deposit owing to alleged damage to the rental unit, though the Tenant stated they believe the invoices submitted by the Landlord were false and disputed any notion they caused damage to the rental unit. There was no condition inspection of the rental unit at either the start or the end of the tenancy.

The Tenant notified the Landlord of their entitlement to receive one month's rent in compensation as the tenancy was ended under the Notice. Initially the Landlord refused, saying that as the tenancy was now on a month-to-month basis, they did not have to compensate the Tenant.

The Landlord eventually agreed that the Tenant could withhold the rent due September 1, 2022, as this was the last month's rent, but as the Tenant moved out early, this never happened.

The Tenant also seeks \$16,200.00 in compensation for loss of quiet enjoyment, which equates to six months' rent. The Tenant testified that their quiet enjoyment was breached during the last six months of the tenancy when two other tenants of the landlord moved into the suite below the rental unit at the end of February 2022.

There were continuous arguments, acts of aggression, threats and instances of racism against the Tenant from the lower tenants. The Tenant stated the lower suite was not intended to be a separate unit, so there was no sound proofing and the lower tenants could be heard arguing in their suite and the sound carried throughout the rental unit.

On March 11, 2022, screaming and shouting was heard coming from the lower suite and the police were called. One of the tenants was asked to stay away from the residential property for a while, but soon came back and arguments intensified. The Landlord was informed of the incident the next day.

The Tenant stated that disturbances from the lower tenants were an almost daily occurrence and there could be multiple incidents per day which varied in length and intensity. Sometimes one of the lower tenants would rant for long periods, including times when the Tenant and their children would be the subject of the rants, where they were referred to using racist slurs and extreme profanities.

The lower tenant was also heard saying they knew people who would “deal with” the Tenant, that they would smash their heads and dismember their son, and that they wished the Tenant had been involved in a tidal wave disaster.

The Tenant’s patio furniture was also broken, and the lower tenants were heard discussing this. The lower tenant also purchased an electric guitar which they would play at night.

To the Tenant’s knowledge, the Landlord only once communicated with the lower tenants soon after the incident on March 11, 2022, asking them to “smarten up” and the Landlord never responded to text messages and emails asking them to intervene, despite follow up messages.

The Tenant entered into evidence copies of text message and email correspondence, an audio recording of the lower tenants’ conversation, and a police report relating to the March 11, 2022 incident.

### 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.

### *Return of Security Deposit*

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, which ever is later.

A landlord may also retain the security deposit if they either have authority from an arbitrator, or written agreement from the tenant to do so as set out in sections 38(3) and 38(4) of the Act.

Section 36 of the Act also states that a tenant may also extinguish their right to the return of a security deposit if they fail to attend an inspection of the rental unit at either the start or end of the tenancy after being given two opportunities to do so, unless the tenant has abandoned the rental unit.

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.

Based on the evidence before me and the testimony of both parties, I find that the tenancy ended on August 31, 2022, under the Notice. The Tenant testified they provided their forwarding address in writing to the Landlord on August 18, 2022 via email which is supported by the copies of the correspondence provided as evidence.

Though the parties did not have an agreement to serve documents to one another via email, I find the parties regularly communicated via email throughout the tenancy, and based on the text message correspondence entered into evidence, the Landlord acknowledged receipt of the Tenant's correspondence containing their forwarding address on August 18, 2022.

I find no prejudice to the Landlord by the Tenant sending their forwarding address to them via email. Therefore, per section 71 of the Act I find the Tenant's forwarding address was sufficiently served to the Landlord for the purposes of the Act, and was received by the Landlord on August 18, 2022, per their acknowledgement.

This means the Landlord would have had to either return the security deposit to the Tenant or make an application for dispute resolution claiming against the security deposit by September 2, 2022.

I find the Landlord has not returned the security deposit to the Tenant based on the undisputed testimony of the Tenant and the sworn affidavit of the Landlord entered into evidence. Nothing before me indicates the Landlord submitted an application claiming

against the security deposit at all, let alone within fifteen days of receiving the Tenant's forwarding address in writing.

I also find no evidence that indicates to me the Landlord was entitled to retain the security deposit under either sections 38(3) or 38(4) of the Act as the Landlord did not have an outstanding Monetary Order against the Tenant, or have written permission from the Tenant to retain the security deposit.

Additionally, I find there is no evidence that the Tenant had extinguished their right to the return of the security deposit under section 36 of the Act by failing to attend an inspection of the rental unit after at least two opportunities were given to them, as it appears no inspections took place.

Given the above, I find the Landlord has failed to comply with section 38(1) of the Act and grant the Tenant's Application. Therefore, I order the Landlord to return double the security deposit, plus interest, to the Tenant, per section 38(6) of the Act.

Per section 4 of the *Residential Tenancy Regulation* (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 \$77.49 using the Residential Tenancy Branch interest calculator using today's date. The interest applies only to the original deposit and is not doubled.

#### *Compensation 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 of the Act 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 set out in section 51(1.1) of the Act, a tenant may withhold the last month's rent by way of compensation, or, per section 51(1.2) of the Act if a tenant has given notice to end the tenancy before the effective date of the Notice to End Tenancy, the landlord must refund the amount paid.

Based on the undisputed testimony of the Tenant and the evidence before me, I find the tenancy was ended by the Tenant before the effective date of the Notice on August 31, 2022, as the Tenant was entitled to do under section 50(1) of the Act. I also find the Tenant paid the \$2,700.00 rent due on August 1, 2022 per the tenancy agreement, that

this was not reimbursed to the Tenant, and therefore there was no opportunity for the Tenant to withhold the rent due on September 1, 2022.

Given the above, I find the Tenant had not received the one month's rent compensation due to them for the tenancy being ended under the Notice. I therefore grant the Tenant's Application and under sections 51(1) and 67 of the Act I issue the Tenant a monetary award of \$2,700.00.

### *Tenant's Monetary Claim*

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, Regulation, or their tenancy agreement, the non-complaint party must compensate the other for damage or loss that results. Section 7(2) of the Act also requires a party claiming compensation as a result of the other's non-compliance to take reasonable steps to minimize the damage or loss.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The Tenant seeks \$16,200.00 for an alleged breach of quiet enjoyment over a six month period where they allege the Landlord failed to address their complaints regarding the disruptive conduct of the tenants in the suite below the rental unit.

Section 28 of the Act sets out a tenant's right to quiet enjoyment which includes, the rights to reasonable privacy and freedom from unreasonable disturbance.

As set out in Policy Guideline 6 - Entitlement to Quiet Enjoyment, a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.



In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

I find the testimony of the Tenant on the subject of the alleged disturbances from the lower tenants to be rich in detail, consistent and supported by evidence. As such I find the Tenant's testimony to be credible and carries significant weight.

Based on the audio recording entered into evidence I find that sound travelled with ease into the rental unit from the suite below. The conversation between the lower tenants appears to carry through to the rental unit at a significant volume and with great clarity.

I find the police report entered into evidence supports the Tenant's allegation there was a domestic dispute between the lower tenants on March 11, 2022. Based on the Tenant's testimony and evidence, I find that from March 11, 2022, to the end of the tenancy on August 31, 2022, there was frequent and significant breaches of the Tenant's right to quiet enjoyment which took the form of noise disturbances from the disputes between the lower tenants and loud conversations and rants where the Tenant and their family were at times targeted racially.

I also find the Tenant took appropriate action in response to the disturbances to mitigate them, namely reporting the issue to the police and the Landlord. I find the Landlord took minimal steps in response to the Tenant's reports of disturbance and failed to adequately intervene and essentially they turned a blind eye to the matter, only acknowledging the issue when they sought to end the tenancy for their occupancy of the rental unit.

Overall, I find the Tenant has established their claim for compensation under sections 28 and 67 of the Act for a breach of their right to quiet enjoyment, though find the amount sought to be excessive. The \$16,200.00 requested amounts to a full reimbursement of rent over the six month period the disturbances occurred would not, in my view, be reasonable in this case. However, I find it appropriate that the Tenant is compensated \$300.00 for each month their right to quiet enjoyment was breached and issue the Tenant a monetary award of \$1,800.00 accordingly.

### *Filing Fees*

As the Tenant has been successful in their Applications, I find they are entitled to the reimbursement of the \$100.00 filing fee under section 72 of the Act. I grant the Tenant a monetary award for \$100.00, though decline to order the Landlord reimburse the Tenant for the filing fee for both Applications, since the Tenant had the option to amend their first Application to include their claim for loss of quiet enjoyment under section 67 of the Act, rather than file a second Application and incur a further \$100.00 fee.

### Conclusion

The Tenant's Application is granted.

The Tenant is 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 Tenant's 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.

<b>Item</b>	<b>Amount</b>
Return of double the security deposit, plus interest	\$5,477.49
One Month's rent compensation under section 51(1) of the Act	\$2,700.00
Loss of quiet enjoyment under sections 28 and 67 of the Act	\$1,800.00
Filing fee under section 72 of the Act	\$100.00
<b>Total</b>	<b>\$10,077.49</b>

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: May 1, 2024

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Residential Tenancy Branch