



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Landlord: **MNDCL-S, LRSD, FFL**
 Tenants: **MNETC, FFT**

Introduction

This hearing dealt with the Landlord's Application under the *Residential Tenancy Act* (Act) for:

1. A Monetary Order for compensation for a monetary loss or other money owed under section 67 of the Act; and,
2. Recovery of the application filing fee under section 72 of the Act.

This hearing also dealt with the Tenants' cross Application under the Act for:

1. An Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property under section 51 of the Act; and,
2. Recovery of the application filing fee under section 72 of the Act.

Landlord Y.M., Landlord's agent H.L., contractor T.G. attended the hearing for the Landlord.

Tenant S.M. attended the hearing for the Tenants.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenants were deemed served on December 13, 2023, by registered mail in accordance with sections 89(1)(c) and 90(a) of the Act, the fifth day after the

registered mailing. The Landlord provided a Proof of Service form #RTB-55 to confirm this service. The Tenants confirmed receipt.

This matter was adjourned so that the Tenants' Proceeding Package and evidence could be re-served to the Landlord's agent. I find that the Landlord was sufficiently served on April 18, 2024 by email in accordance with section 71(2) of the Act. The Tenants uploaded a copy of the email sent to the Landlord's agent as proof of service of their Proceeding Package and evidence.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to a Monetary Order for compensation for a monetary loss or other money owed?
2. Is the Landlord entitled to recovery of the application filing fee?

Tenants:

1. Are the Tenants entitled to an Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property under section 51 of the Act?
2. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

This Decision should be read in conjunction with the Interim Decisions dated April 9, 2024, and June 3, 2024.

The parties confirmed that this tenancy began as a fixed term tenancy on October 1, 2017. The fixed term ended on September 30, 2018, then the tenancy continued on a month-to-month basis. At the end of the tenancy, monthly rent was \$4,100.00 payable on the first day of each month. A security deposit of \$2,000.00 and a pet damage deposit of \$2,000.00 were collected at the start of the tenancy. The Tenants received double their deposits returned from a previous dispute resolution.

The parties agree there are two different Two Month Notices issued. One was dated November 16, 2021, and the reason to end the tenancy was that the child of the Landlord or the Landlord's spouse will occupy the rental unit. The second Two Month Notice was dated December 22, 2022, and the reason to end tenancy was that the Landlord or the Landlord's spouse will occupy the unit. There was an earlier Two Month Notice, but that one was successfully canceled by the Tenants.

The Landlord's agent said the correct Two Month Notice that ended the tenancy was the Two Month Notice dated November 16, 2021. The effective date on that Two Month Notice was January 31, 2022.

The Tenants disputed the November 16, 2021 Two Month Notice, and were not successful. Because the effective date of the notice had passed, the Arbitrator granted an Order of Possession to the Landlord effective on 2 days notice to the Tenants on May 30, 2022.

The Tenants judicially reviewed the May 30, 2022 Residential Tenancy Branch (RTB) decision. The petition was heard on June 19, 2023, and the Tenants did not attend the hearing. The judge dismissed the Tenants' petition, and the stay of the RTB Order of Possession was vacated and of no force and effect on June 30, 2023.

In the waiting time for the judicial review to be heard, the Landlord served a Two Month Notice dated December 22, 2022 on the Tenants by registered mail, and the Tenants confirmed its receipt.

The effective date on the second Two Month Notice was February 28, 2023. The Tenants had disputed this notice, and at the hearing on May 12, 2023, they testified that they withdrew their application. The Landlord did not attend this hearing. The Tenants testified that the parties mutually agreed that the tenancy ended on June 30, 2023 due to the Two Month Notice.

The Tenants did not receive their last month's rent free, or any month rent free after the Landlord issued the Two Month Notice. The Tenants said that the Landlord's agent insisted that they pay their rent in June 2023.

The Landlord's application seeks \$31,932.10 to cover lawyers' fees for a judicial review, and a court bailiff service fee. The Landlord's application also sought to retain the Tenants' deposits, but this matter has already been dealt with in a previous dispute resolution.

The Landlord uploaded two lawyer's statements of account. The first dated March 2, 2023 totaling \$21,681.40, and the second dated May 12, 2023 totaling \$3,087.00. The Landlord also uploaded a deposit on account to the court bailiff totaling \$7,163.70.

The Tenants sent an email to the Landlord's agent on June 29, 2023 stating:

The house is ready for you to take possession.

We hired professional cleaners and did a lot of basic maintenance, as we stated we would leave the house in good condition.

I am having a few of the outside items picked up today and tomorrow, but you are good to proceed.

I wish things could have been handled differently, but we are here now.

The Tenants moved from the rental unit on June 30, 2023, and the Landlord did not require the services of the court bailiff.

The Landlord said after the Tenants vacated, the Landlord's agent said there was some damage, and it had to be repaired before the Landlord or the Landlord's child moved in. The Landlord's agent said they needed to do some renovations. Either way, this was the Landlord's plan prior to occupying the rental unit. The Landlord did not upload any picture evidence of damage left in the rental unit after the Tenants vacated.

The rental unit was empty in July and August 2023, and the Landlord retained a contractor on September 1, 2023 to do:

1. **Kitchen renovation service.** The Customer wishes to obtain the Contractor's services to perform the following work:
 - a. Install cabinets base on the size of kitchen
 - b. Install granite countertop base on size of cabinets
 - c. Install metal sink and water tap
 - d. Install hood fan
 - e. Install cooktop
 - f. Paint upper level 5 bedrooms
 - g. Install new tile for kitchen floor
 - h. Install 1670 sqft laminate floor and stairs (include small office, not include materials)
 - i. Re-make walking shower for master bedroom
 - j. Redo floor leveling before install laminate floor (\$ 90 per bag of concrete, base on needed and this part of payment not including in total charge)
 - k. Check out pipe of master bathtub

The work was to begin on September 2, 2023 and to complete before or on December 31, 2023.

The Landlord's agent said that the contractor had to fix a water leak, and the Landlord provided evidence of the depth and scope of work including repairs to the bathroom on the second floor, master bedroom bathroom, bathroom in the glasses room, second bedroom, kitchen, laundry room, first floor bathroom, activity room, and the living room.

The work was to begin on December 18, 2023 and to complete before or on April 30, 2024.

The contractor wrote an explanation report on the delayed occupancy post-renovation. He wrote that the primary reasons for the delay were due to material order delays, flooding issues, air quality concerns, electrical safety measures, and weather-related delays.

The Landlord testified that her and her daughter moved into the rental unit on April 15, 2024.

At the hearing, Tenant S.M. asked many questions of the Landlord's contractor, T.G., who was retained to do the renovations to the rental unit. T.G. told the Tenants that his contractors began working on the rental unit after October 1, 2023. Then later T.G. said his contractors started work in the residential property on September 2 or 3, 2023.

Tenant S.M. asked about the type of hood fan that was installed, and whether the cooktop was gas or electric. Tenant S.M. asked about the painting that occurred in the rental unit. T.G. said the first floor painting began in October, and the last coat of painting occurred in the new year.

T.G. said he noticed a water leak from outside into the home's crawlspace in December 2023. T.G. said he had to replace the main drain. He testified that they repaired it.

Tenant S.M. questioned T.G. about his qualifications to assess for mould damage, but T.G. did not understand what Tenant S.M. was asking him.

Tenant S.M. asked T.G. if he took before and after photos of the renovations done. T.G. said he only has after photos.

T.G. told Tenant S.M. that he completed the renovations at the end of April 2024, and that the Landlord moved into the rental unit at the start of April.

Tenant S.M. testified that they left the rental unit reasonably clean and undamaged.

Tenant S.M. asked T.G. how long he has known the Landlord's agent. T.G. said he has known the Landlord's agent "*lots of years*". Tenant S.M. asked T.G. if he has done a lot of work with the Landlord's agent, T.G. said, "*not really, sometimes.*"

The Tenants said that BCSC costs are not under the RTB's jurisdiction. If the Landlord wants to seek legal costs from the Tenants for the judicial review done, this is something that the Landlord would have to ask the BCSC.

The Tenants vacated the rental unit on June 30, 2023. The Tenants were under the impression that the Landlord was moving in on July 1, 2023 based on emails received from the Landlord's agent on June 22, and 28, 2023 asking the Tenants to provide vacate possession of the rental unit to the Landlord. On July 28, 2023, Tenant S.M.'s sister knocked on the front door of the home, and no one was there, there was no furniture in the house, and no work had been done.

On September 11, 2023, Tenant V.C. stopped by the property, and knocked on the door. No one answered the door, no work had started in the house, and the original carpet still remained on the stairs in the home. A card was left on the door, it had Tenant S.M.'s name on it, and it was weathered. Tenant V.C. took pictures of the outside of the home, and inside the home through the windows at the front door. Tenant S.M. argued that the picture evidence contradicts the Landlord's contractor's testimony that work had started in the home on September 2 or 3, 2023.

On September 20, 2023, Tenant S.M.'s sister stopped by the house again. There was still no furniture there, she knocked on the front door, and no one answered. No work had started in the home.

On October 24, 2023, the Tenants began the direct request process to seek the return of their deposits. The Tenants testified that the registered mail packages sent to the Landlord were returned to the Tenants.

In mid-October 2023, a friend of Tenant S.M. stopped by the rental unit, and took pictures through the front door of the house. No renovation contract work had started, and the original carpets still remained on the stairs. Tenant S.M. again said these findings contradicted T.G.'s testimony in the hearing.

On November 15, 2023, Tenant S.M.'s sister again stopped at the property. No one answered the door, now there was a lock key attached to the front door. Some painting had started in the rental unit by this time.

When the Tenants sent their Proceeding Package to the Landlord at the residential property, no one picked up the package or notified the Landlord's agent, despite the fact that renovations were supposedly going on, and the package was returned to the Tenants. The Tenants submit that if the Landlord's agent was the property manager and renovations were being done, the Tenants' registered mail package would have been claimed. The Tenants argue that the property was empty and left unattended.

On March 8, 2024, Tenant V.C.'s father stopped at the residential property. No one answered the door, there were overflowing letters in the mailbox, there was a letter taped to the front door, and there was no furniture inside the home.

The Tenants said that it took six months to completely remove their names from the FortisBC gas account for the residential property because there was no response from the property owners, the Landlord's property manager, or the Landlord's son to FortisBC. The Tenants testified that FortisBC sent letters, emails, and tried calling with no response from the Landlord. It was very clear that no one was monitoring this property.

Tenant S.M. received a usb stick with all the Landlord's evidence which are deemed served on May 24, 2024. Tenant S.M. said when he right clicks on any of those files, and goes into the properties of the file, he can see that all the pictures were created in April 2024. Tenant S.M. said some work was done in a rush in the home in April 2024, and the Landlord's agent uploaded it after our first adjournment on April 9, 2024. Tenant S.M. asserts this was almost a year after when the Landlord was to move into the residential property.

Tenant S.M. said there is a video uploaded by the Landlord's agent, showing some furniture being moved in. To him, it seems very staged.

The Tenants submit that the Landlord and her daughter did not move into the residential property and accomplish the stated purpose within a reasonable period after the effective date of the notice.

The Landlord's agent replied that none of the Tenants' photos have dates on them. The Landlord's agent asked how the Tenants gained access to the house to take the pictures they uploaded. The Landlord did not know when the judicial review matter was

going to be heard, so they did insist that the Tenants pay rent for the month of June 2023. After the Tenants vacated, they did not provide their forwarding address to the Landlord. If they had, the Landlord would have paid them their last month's rent as required after issuing a Two Month Notice.

Analysis

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. For the Landlord's application, the onus to prove their case is on the Landlord.

For the Tenants' application, I find that the onus is reversed, and the Landlord must prove that they accomplished the stated purpose for ending the tenancy under section 49 of the Act within a reasonable period after the effective date of the notice for at least six months.

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

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 tenant 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 compensation to cover their lawyer's fees for a judicial review of an RTB decision at the BCSC. The Tenants said if the Landlord wants compensation for a matter held in the BCSC, then the RTB does not have jurisdiction to grant this, and the Landlord must seek their remedy in the BCSC.

I find that the Act does not provide the remedy the Landlord seeks to pay for their lawyer's fees in a matter held at the BCSC. I decline to grant compensation to the Landlord for this part of their claim.

The Landlord seeks compensation for a bailiff's retainer. The Landlord did not require the services of a bailiff to remove the Tenants from the residential property. The Tenants voluntarily vacated the property on June 30, 2023. I find the Landlord has not established a claim for recovery of the court bailiff's fees, and I decline to grant compensation to the Landlord for this part of their claim.

Based on the testimonies of the parties, and on a balance of probabilities, the Landlord's monetary claims under section 67 of the Act are dismissed without leave to re-apply.

Are the Tenants entitled to a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy?

Section 51(2) of the Act says that if a tenancy ends under section 49 of the Act, a landlord, or purchaser if applicable, must pay the tenant 12 times the monthly rent if the reason for ending the tenancy has not been completed within a reasonable time after the effective date of the notice, or the rental unit is not used for the stated reason for at least six months' duration if the notice to end tenancy was issued on or before April 2, 2024.

I note two separate Two Month Notices were issued by the Landlord. The Tenants attended the May 12, 2023 hearing and withdrew their application to cancel the second Two Month Notice. I find the BCSC matter concluded on June 19, 2023, and the Tenants agreed to vacate the rental unit on June 30, 2023. Section 68(2) of the Act allows me to set the date when the tenancy ends other than the effective date shown on the notice to end the tenancy. I find the tenancy end date is June 30, 2023, and accordingly, the new effective date for the Two Month Notice issued on November 16, 2019 is June 30, 2023. Therefore, I find the six-month end date for this analysis is deemed to be December 31, 2023.

The parties confirmed that the Landlord did not compensate the Tenants one month's rent payable under the tenancy agreement after they received a notice to end tenancy under section 49 of the Act. As required under section 51(1) of the Act, I find the Tenants are entitled to compensation totaling **\$4,100.00** which corresponds to one month's rent payable.

The Landlord gave evidence that because there was some damage in the rental unit, that they needed to work on this before they moved into the rental unit. The Landlord did not upload any evidence of the alleged damage. The Landlord testified that they moved in on April 15, 2024.

Based on the testimonies of the parties, I find that neither the Landlord's child nor the Landlord moved into the rental unit and used the home within a reasonable period after the effective date of the notice for the stated purpose. I find that the Tenants have 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.

Under section 58(2) of the Act, amounts claimed for debt or damages that are more than the monetary limit under the *Small Claims Act*, exclude compensation claimed under sections 51(1) and 51(2) of the Act. I find the Tenants are entitled to 12 month's rent payable as it is established that neither the Landlord's child nor the Landlord accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice. The Tenants are entitled to **\$49,200.00** for the Landlord breaching section 51(2) of the Act.

Residential Tenancy Policy Guideline #50-Compensation for Ending a Tenancy (PG#50) addresses issues for resolving disputes of when a landlord does not fulfill their legal obligations after issuing a section 49 notice (e.g., the Two Month Notice).

Section 51(3) of the Act can excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for at least six months. PG#50 defines what would and would not constitute an extenuating circumstance.

The commonality of the examples outlined in PG#50 for extenuating circumstances is that the event was outside the control of the landlord, whereas the examples of a non-extenuating circumstance include the common element of a landlord having decision-making authority or control over the event.

The Landlord's agent said the Landlord had to deal with damage after the Tenants vacated the rental unit. The Tenants argued that they left the rental unit reasonably clean and undamaged. The Landlord's agent did not point to any picture evidence demonstrating any damage left in the rental unit. Further, I find this does not explain the unoccupied home in July and August 2023.

PG#50 also states that another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy.

The Landlord's contract for renovations with T.G. is for extensive repairs and renovations to the rental unit. Neither party provided any evidence that the rental unit was in need of extensive repairs. I find that the Landlord's goal was to renovate the residential property, and the Landlord has not proven that there were extenuating circumstances that prevented them from accomplishing the stated purpose. I find the Landlord has chosen to complete renovations of the residential property and cannot be excused from paying the Tenants 12 months compensation.

Therefore, I find the Tenants are entitled to a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act in the amount of \$53,300.00.

Is the Landlord entitled to recovery of the application filing fee.

As the Landlord was not successful in their claim, they must bear the cost of the application filing fee.

Are the Tenants entitled to recovery of the application filing fee.

As the Tenants are successful in their application, I find the Tenants are entitled to recover the **\$100.00** application filing fee under section 72 of the Act.

The Tenants total monetary award is \$53,400.00 (\$4,100.00 + \$49,200.00 + \$100.00).

Conclusion

The Landlord's Application is dismissed without leave to re-apply.

I grant a Monetary Order to the Tenants in the amount of \$53,400.00. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply

with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 21, 2024

Residential Tenancy Branch