Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes MNDCT, MNETC, MNSD, FFT

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51(2) of the Act
- a Monetary Order for return of the security and pet damage deposit under section 38 of the Act
- a Monetary Order for loss or other money owed under section 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Tenant N.S. attended the hearing.

Landlord C.M. attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find the Landlord was served on September 17, 2025, the date of delivery, by registered mail in accordance with section 89(1) of the Act with the proceeding package for the Tenant's application ending -904. The Tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service to the Landlord and the Landlord acknowledged receipt of the package.

I find the Landlord was deemed served five days after the Tenant deposited with a courier on October 6, 2025, the proceeding package for the Tenant's application ending -206. The Tenant provided a copy of the courier receipt with tracking number to confirm this service and the Landlord acknowledged receipt of this proceeding package as well.

Service of Evidence

The Landlord acknowledged receipt of the Tenant's evidence but stated that several text messages had been enlarged and were illegible as a result. The Landlord was advised that in the event the Tenant referred to these during the hearing, the Landlord could raise an objection at that time.

The Landlord confirmed she submitted her evidence three (3) days prior to the hearing and served copies to the Tenant by email. The Tenant stated she last checked her email the evening prior to this scheduled hearing and had received no emails from the Landlord. The Landlord was advised her service of evidence was late and as the Tenant had not received the email, the documents would be excluded but the Landlord was permitted to testify as to the contents of those documents.

Preliminary Matters

During the hearing it was noted the Tenant had identified in her application two family members as tenants whereas these individuals were occupants. Thus, without objection, the Tenant's application was amended to remove those two individuals as named tenants in this application.

Issues for Decision

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

Is the Tenant entitled to a Monetary Order for the return of all or a portion of the security and/or pet damage deposits provided to the Landlord?

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

May the Tenant recover the filing fee for this application from the Landlord?

Background and Evidence

I have reviewed the evidence and I have considered the testimony of the parties in reaching my determination.

The evidence establishes this tenancy began in 2015 when the Tenant rented a portion of the rental property. On September 1, 2017, the Tenant and Landlord entered into a

tenancy agreement providing for a monthly rental rate of $2,450.00. The monthly rent remained unchanged during the tenancy which ended on February 29, 2024. The Tenant provided the Landlord with a security deposit in the amount of $1,225.00 on September 15, 2017, and a pet damage deposit in the amount of $1,000.00 on March 28, 2018. The Landlord confirms she did not return these deposits to the Tenant although the Tenant requested they be returned. A copy of the tenancy agreement was submitted in evidence.

On December 26, 2023, the Landlord issued a Two Month Notice to end tenancy for the Landlord's use of the rental unit. The effective date of the Notice was February 29, 2024. A copy of the Notice was provided in evidence. The Tenant stated the Landlord did not move into the rental unit until April 6, 2024. The Tenant further provided a text message exchange between the parties dated August 24, 2024, wherein the Landlord states in response to an inquiry from the Tenant that the car in the driveway belongs to a tenant.

The Landlord stated she moved into the rental unit on April 8, 2024, explaining that due to contracting Covid and delays in obtaining a phone and internet connection for the rental property, she was unable to physically reside in the unit in March 2025. However, the Landlord noted she had moved furniture into the rental property in early March 2024. The Landlord stated she had a change in her employment affecting her financial condition and thus, she explained, she rented the one-bedroom basement suite to a tenant on August 1, 2024.

The Tenant also requested compensation for landscaping and lawn work on the rental property in the total amount of $17,989.20 which she paid to two different landscape and lawn companies from 2020 through 2023. Although not provided in the tenancy agreement that the Landlord would be responsible for landscaping or lawn care costs, the Tenant submitted a single text exchange where the Landlord offered to compensate an unstated sum incurred by the Tenant for landscaping/lawn care on a particular occasion. The Landlord stated she had no agreement with the Tenant to reimburse for landscape or lawn care costs, nor were these costs to be included as part of the monthly rent or otherwise borne by the Landlord under the terms of the tenancy agreement. Rather, the Landlord explained, she had informed the Tenant she would pay for any arborist that was required at the property, the Landlord stating she had a specific arborist she routinely used. Furthermore, the Landlord stated that although there was a portion of the property that abutted a municipal road that had grass on it, for which the Landlord was responsible for maintaining, she had not told the Tenant she would pay for the cost of maintaining that area. Finally, the Landlord stated, she preferred to allow the plants and trees on her property to be in a "wild" condition as opposed to a tended, landscaped yard.

Finally, the Tenant seeks reimbursement for a repair made to a stairs or patio during her tenancy. The Tenant provided receipts for materials and labor totaling $2,084.20. The

Tenant also submitted a copy of a text message from the Landlord authorizing the work and agreeing to reimburse the Tenant. The Landlord acknowledged she had told the Tenant she would reimburse the Tenant for the cost of materials and labor in making the repair, and further stated she was aware a Tenant family member would do the work. Although the Landlord expressed some concern about the quality of the repair, she stated during the hearing she agreed to reimburse the Tenant in the amount of $2,084.20.

Analysis

Is 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 52 of the Act addresses the form and content for a notice to end tenancy to be valid:

- be signed and dated by the landlord or tenant giving the notice;
- give the address of the rental unit;
- state the effective date of the notice;
- state the grounds for ending the tenancy (with limited exceptions pertaining to a tenant's notice); and,
- when given by the landlord, be in the approved form.

I find the Notice issued by the Landlord on December 26, 2024, complies with section 52 of the Act.

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, and the rental unit is not used for the stated purpose for at least six months' duration if the notice to end tenancy was issued on or before April 2, 2024. A tenant's claim for compensation for a landlord's alleged failure to accomplish the stated purpose for issuing the Notice does not require a determination the Notice was issued in good faith (as provided in section 49).

Policy Guideline 2A provides guidance based upon judicial interpretation of "occupy," which "means 'to occupy for a residential purpose.'" (See *Schuld v. Niu*, 2019 BCSC 949; *Blouin v. Stamp*, 2021 BCSC 411). The Guideline further states: "In general, the entirety of the reclaimed rental unit is to be occupied by the landlord or close family member for at least [6] months [in this case], even if only part of that space will be used as living accommodation (see *Blouin v. Stamp*, 2021 BCSC 411, *Koyanagi v Lewis*, 2021 BCSC 2062). An owner who retakes possession of a rental unit can, however,

have paying roommates so long as those roommates share the bathroom or kitchen facilities with the owner."

Policy Guideline 50 notes that an extenuating circumstance may excuse a landlord from paying compensation to a tenant pursuant to section 51. The Guideline states:

> If evidence of extenuating circumstances is present, the director must consider whether those circumstances prevented the landlord from meeting their legal requirements (see *Maasanen v. Furtado*, 2023 BCCA 193).
>
> Extenuating circumstances are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable landlord's control. The main question is whether the Legislature would have intended for the landlord to be captured by the compensation provisions, which have a punitive and deterrent element. (See also *Athwal v. Johnson*, 2023 BCCA 460 and *Shigani v. Taylor*, 2024 BCSC 979).

In this case, the Landlord explained she began moving her belongings into the rental property in early March 2025 but did not physically reside in the home until April 8, 2024 due to her contracting Covid. I find the Landlord contracting Covid was an extenuating circumstance that precluded her from moving into the rental property until approximately 5 weeks after the effective date on the Notice.

The Landlord was obligated to occupy the entirety of the rental property for residential purposes for the 6-month period after the effective date of the Notice. I find the Landlord failed to do so, admitting to renting out a portion of the residence based upon a change in her financial circumstance. While the Landlord testified she had a change in financial circumstances compelling her to let a portion of the property to a tenant, she did not provide corroborating evidence sufficient to establish an extenuating circumstance that would permit a finding that it would be unjust or unreasonable to compensate the Tenant in accordance with section 51(2).

Therefore, I find the Tenant is 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(2) of the Act, in the amount of $29,400.00.

Is the Tenant entitled to a Monetary Order for the return of all or a portion of the security and/or pet damage deposit provided to the Landlord?

Section 38(4) allows a landlord to retain from a security and/or pet damage deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security and/or pet damage deposit, section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Section 38(6) of the Act states that if the landlord does not return the deposit(s) or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

The Landlord stated a move-in inspection was done with the Tenant but not a move-out inspection. The Landlord confirmed her receipt of the Tenant's forwarding address on February 9, 2024, before the end of the tenancy on February 29, 2024. The Landlord further stated she had not made an application for any damage to the rental unit within 15 days of the end of the tenancy confirming there had been no prior applications made concerning this tenancy.

Therefore, as discussed with the Landlord during the proceeding, I find the Tenant is entitled under section 38 to a monetary order for double the amount of the security deposit, double the amount of the pet damage deposit, plus interest on the initial amount of each deposit, which I find totals $4,573.23.

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

In this case, the Tenant requested compensation from the Landlord for the cost of materials and labor in the amount of $2,084.20, with regard to the Tenant's undertaking of repairs at the rental property. The Landlord stated at the hearing that she agreed to reimburse the Tenant this amount.

The Tenant also requested reimbursement for landscaping costs in the total amount of $17,989.20 for the period from 2020 through 2023. The Tenant described how the landscaping was necessary for her and her pets to access certain parts of the property. The Tenant's position was the Landlord had agreed to pay these costs as included in the monthly rent based upon a text message exchange on one occasion between the parties. The Tenant admitted that landscaping or lawn care costs were not stated in the

tenancy agreement as included as part of the monthly rent or that the Landlord would reimburse the Tenant for this expense. The Landlord stated she had not agreed to landscaping costs and the Tenant requesting reimbursement at this time after the work was done had deprived her of an opportunity to evaluate what landscaping work had been done. Upon inquiry the Tenant did not adequately explain why the Tenant had waited five years from the start of paying landscaping invoices before requesting reimbursement from the Landlord. I find the Tenant has failed to provide adequate evidence the Landlord agreed to reimburse the Tenant for these landscape and/or lawn care costs. I further find that even if the Tenant could provide adequate evidence this was the agreement between the parties, the Tenant waived her right to request reimbursement as she made no request when accruing these costs over a 3 year period to seek compensation from the Landlord, thereby preventing the Landlord from evaluating the work done and depriving her of the opportunity to further clarify with the Tenant any amount she would reimburse to the Tenant. Therefore, I decline to grant the Tenant's request for reimbursement of landscaping costs in the sum of $17,989.20 as set forth in the Tenant's application.

For the above reasons, the Tenant's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is granted in the amount of $2,084.20, the amount of the repair of the stairs at the rental property.

May the Tenant recover the filing fee for this application from the Landlord?

As the Tenant was successful in application ending -904, the Tenant's application for authorization to recover the filing fee for this application from the landlord under section 72 of the Act is granted with respect to that application. In the exercise of my discretion under section 72, the Tenant's request for reimbursement of the filing fee regarding application ending -206 is dismissed without leave to reapply notwithstanding that the Tenant was successful in her application. An amendment to her then-pending application to include a request for return of the security and pet damage deposits precluded the necessity of the Tenant filing the application ending -206.

Conclusion

I grant the Tenant a Monetary Order in the amount of **$36,157.43** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for double the security deposit ($1,225.00 x 2) and double the pet damage deposit ($1,000.00 x 2) under section 38(6)	$4,450.00

Interest on the initial security deposit amount ($67.85) and interest on the initial amount of the pet damage deposit ($55.38)	$123.23
a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51(2) of the Act	$29,400.00
a Monetary Order for monetary loss under section 67 of the Act	$2,084.20
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	$100.00
Total Amount	**$36,157.43**

The Tenant is provided with this Order consistent with these terms and 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 in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than $35,000.00. Monetary Orders that exceed $35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

This decision issues on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 30, 2025

Residential Tenancy Branch