# Dispute Resolution Services



Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DORSET RNOTE
EALTY GROUP CANADA LTD.
and [tenant name suppressed to protect privacy]

Dispute Codes **DECISION**
**MNDCT, MNSD, FFT**

Introduction

This hearing dealt with an application 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 for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This is a continuation of a hearing which began on August 23, 2022. The hearing that day was scheduled for one hour and was not completed in that time. The hearing was adjourned after 62 minutes pursuant to the terms in an Interim Decision of August 24, 2022.

When the hearing resumed, the same participants attended. The tenant attended. The agent JH attended for the landlord ("the landlord"). Both parties continued to have opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised at the initial hearing.

Each party confirmed they were not recording the hearing.

Each party had previously provided their address to which the Decision shall be sent.

Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

At the outset, I informed the parties that only one hour was set aside for the conclusion of the adjourned hearing. Efficient, non-repetitive presentations were essential if the matter was to be concluded within the scheduled time.

During the hearing, the tenant loudly and repeatedly expressed disappointment and disagreement with my conduct of the hearing. The tenant disrupted the hearing, talked louder than me, and refused to stop talking when I asked. The tenant kept repeating the same questions and talking over me. I asked her to allow me to speak so I could answer her questions and move forward with the hearing. I had no affect on the tenant's behaviour. She threatened to appeal my decision if I did not make an award in her favour.

For example, the tenant accused me of preferring the landlord's evidence and reaching various decisions in their favour without given her arguments proper time and credence. I repeatedly said that I would only make my decision *after* the hearing and the written decision would simultaneously be sent to the parties.

The tenant also argued with me about all issues. For example, she debated with the landlord and me about whether her verbal and written notice to the landlord that she would pick up the security deposit cheque amounted to written notice of her forwarding address as required under the Act. Considerable time was spent on this issue with the tenant repeating her point of view.

I warned the tenant many times to stop interrupting and arguing. Despite my warnings, the tenant interrupted, spoke at the same time as, and argued with, the landlord and me throughout the conference.

I informed the tenant that if she continued to disrupt the hearing, I would mute her microphone. The tenant briefly stopped interrupting only to resume periodically until the hearing ended.

The hearings took longer at a total of 3 hours because of the repeated interruptions and disruptive behaviour by the tenant.

Issue(s) to be Decided

Is the tenant entitled to:

- An order for the landlord to return the security deposit pursuant to section 38;

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The tenant submitted considerable documentary evidence and testimony in this lengthy hearing. The tenant's extensive and detailed written submissions included a 149-page submission with copies of receipts, correspondence and a timeline of events of the 39-year tenancy. The tenant raised and spoke to irrelevant issues.

Not all this evidence is referenced in my Decision. I refer only to key, relevant and admissible evidence and my findings.

The parties agreed this is the tenant's first application relating to the tenancy.

The agent JH, who testified at the hearing, explained that she had been the property manager for 8 years. The agent is referenced throughout as “the landlord”.

*1. The Tenancy*

The parties agreed as follows. The 39-year tenancy began on November 1, 1982 and ended on March 31, 2020. A copy of the tenancy agreement was submitted. Rent was $1,242.00 monthly at the end of the tenancy. The unit is in an apartment building.

This application was filed on March 29, 2022 within the 2-years of the end of the tenancy.

The parties agreed as follows. On November 1, 1982 at the beginning of the tenancy, the tenant provided a security deposit of $150.00. This was returned to the tenant on April 6, 2021, along with interest of $234.08 for a total of $384.08.

The landlord testified that, when the tenant moved out, the landlord conducted an inspection. Other than needing a paint job and a new floor, unsurprising given the 39 years of a tenancy, the unit was in good condition. The landlord did not claim any damages.

*2. Tenant’s Claims - Overview*

At the hearing, the tenant confirmed her claim as follows:

| | ITEM | AMOUNT |
|---|---|---|
| | Security deposit | $786.40 |
| | Damages | $3,567.75 |
| | Filing fee | $100.00 |
| | **TOTAL CLAIM BY TENANT** | **$4,454.15** |

The tenant’s claims with respect to the security deposit followed by the damages are addressed below.

*Landlord's Reply – Overview*

The landlord testified as follows. During the lengthy tenancy (39 years), there were many managers who dealt with the tenant's claims. Managers had come and gone. As stated, the agent at the hearing was the manager for the final years of the tenancy.

The landlord stated they first learned of the tenant's claims when the tenant filed the dispute. They were surprised and mystified by the tenant's application, the nature of the claims and their age; some of the claims related to events almost 20 years ago. They had no notice of the tenant's intentions before the application was filed. The landlord did not expect the tenant to claim for expenses from years ago. As a result, records for more than the final 6-8 years of the tenancy were unavailable and not submitted; they have been misplaced, destroyed, or otherwise lost as they were not considered relevant or important.

The tenant asserted the landlord should have known about her claims because of various kinds and times of notice over the years. The tenant said sometimes the complaints were made to the caretaker of the building and sometimes to the then manager.

However, the landlord testified many of the claims were unreasonably old and should be dismissed on that basis. For all the claims, there was no timely notice. The landlord's enquiries after the application was filed indicated that all known issues with the tenant had been resolved. Any previously denied claims of which the landlord had been informed were unfounded, false or spurious.

The landlord submitted documentary evidence relating only to the end of the tenancy - the inspection and the return of the security deposit.

*3. Tenant's Claims: Security Deposit*

The tenant acknowledged receipt of a payment of $384.08 from the landlord for the return of the security deposit ($150.00 plus interest).

The tenant claimed:

1. The interest was calculated incorrectly by the landlord and RTB website.
2. The security deposit was returned outside the 15-day period and therefore should be doubled under the Act.

The tenant submitted a calculation of interest which is different than the landlord's calculation. The tenant's calculation is based on a form which she stated she received from the RTB, although the form does not state its author or source.

The tenant claimed her calculation indicated the following amount was owing:

| ITEM | AMOUNT |
|---|---|
| Security deposit | $150.00 |
| Interest | $435.24 |
| **AMOUNT CLAIMED OWING** | **$585.24** |

The landlord testified they relied on the RTB online tool, being a calculator feature provided in the RTB website for the determination of the amount owing for security deposit and interest. The landlord denied the tenant's assertion that the calculation on the RTB website was incorrect as unreasonable and baseless. The landlord claimed not to have previously seen the form relied on by the tenant.

The landlord claimed they manage many properties and reliance on the RTB calculation is an industry standard.

During the hearing, I accessed the disputed page on the RTB website and opened the calculator feature. I entered the relevant information for the tenancy as provided by the parties.

As stated, the parties agreed on the amount of the security deposit, the dates of payment and return, and the amount calculated by the landlord.

Both parties followed along. I obtained the same result as the landlord of their calculation of the interest owing.

While the tenant agreed the landlord relied on the RTB calculation to reach the figure they relied upon, nevertheless, she asserted there was something wrong with the calculation. She claimed her calculation was correct and the landlord owed her a larger sum.

The tenant also claimed a doubling of the security deposit because in late February 2022, she notified the landlord she would pick up the cheque. She asserted that her verbal notice by phone to the landlord that she (or courier) would pick up the cheque as well as her confirming letter containing this instruction, amounted to the provision of a forwarding address as required under the Act. The tenant acknowledged she did not include her new residential address.

The tenant stated that the “forwarding address” was the landlord’s business office. Therefore, she complied with the Act.

However, the landlord’s office was closed and efforts to pick up the cheque were futile.

The landlord testified the office was closed because of the pandemic. They planned to send the security deposit to the tenant as soon as they had her address to which to send it.

The parties agreed as follows. The tenant delivered an RTB form to the landlord titled Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit dated March 30, 2020, containing her residential address. They agreed this was the first time the tenant notified the landlord of her residential forwarding address. A copy of this completed RTB form was submitted as evidence. They further agreed the landlord sent a cheque for $384.08 on April 6, 2020 within 15 days after receipt of the form.

The tenant acknowledged return of part of the security deposit and claimed the balance was owing:

| ITEM | AMOUNT |
|---|---|
| Amount owing (security deposit + interest) | $585.24 |
| Doubled | $585.24 |
| (Less payment received) | ($384.08) |
| **TOTAL CLAIM OF TENANT** | **$786.40** |

*4. Tenant's Claims – Background*

The tenant submitted many documents and substantial testimony in support of her claims. This section sets out the key affirmed points in the tenant's version of events.

The tenant claimed that throughout the tenancy, the landlord failed to always properly repair of maintain the unit in a timely manner. The landlord often completely ignored the tenant's requests for repairs or compensation. The landlord owes the tenant compensation.

The tenant submitted a detailed history of this lengthy tenancy. The history was cross referenced with correspondence between the parties. An abbreviated timeline is summarized here which was approved as correct by the tenant during the hearing:

| Date | Event |
|---|---|
| November 1, 1982 | Paid deposit - advised that there were no leaks and roof was safe by Mr. W, manager from 1981 to 1987. |
| November 1, 1982 | Moved in and told by manager that certain repairs (floor, counter, balcony door) would be done; they never were. |
| December 1982 | Mouse problem - Manager put out poison. Resolved |

| | |
|---|---|
| Summer 1988 | Leak in bathroom reported to manager who stated source was the roof; fixed. |
| 1989 | Leaks in bathroom - fixed and wall/tub tile replaced. |
| mid-October 1990 | Water leaks in bedroom; fixed. |
| November 24, to December 15, 1990 | Tenant informed manager of leak in bedroom window causing staining of curtains; tenant's insurer declined coverage for cleaning. |
| 1991 | Manager replaced tenant's curtains with blinds without compensation. |
| Summer 1999 | Manager said they would re-paint tenant's bathroom. Was never repainted. |
| December 17, 1999 | Manager promised to repair/replace fan; not done. |
| December 1999 | Inconvenient repairs for leak in another unit; tenant claimed existence of and allergic to mold in wall and sick for a day, unable to work. |
| January 2000 | Communication between tenant and landlord regarding repairs of leak, unauthorized entries to carry out repair, loss of wages for one day. Painting never completed. |

| | |
|---|---|
| December 12, 2000 | Manager attempted unauthorized entry, suspected of losing key to unit. |
| December 14, 2000 | Other tenants claiming leaking in adjacent units originating in tenant's unit; unauthorized entry |
| August and September 2001 | Landlord issued Notice to End Tenancy; landlord stated they will remove tenant's trellis. |
| January 4, 2002 | Leak in living room from May 2001 to January 4, 2002; fixed |
| February 7, 2002 | Tenant reported dripping taps, unresolved. |
| August 12, 2002 | Tenant reports no hot water |
| November 28, 2002 | Tenant reports resolved leak in bathtub, leaving hole in ceramic tile for 2 months. |
| December 2002 | Assertion by landlord that tenant denied entry for repairs was not true; bathroom leak continued after partial repair |
| August 1, 2004 | Running toilet reported |
| April 2005 | Leaking resumed, water stains to curtains, water damage to window blinds. |
| August 1, 2005 | Tenant reported running toilet |

| | |
|---|---|
| May 8, 2006 | Tenant's locker entered, landlord informed and suspected. |
| 2013 | Work to walls not repaired, claims suffering from mold. |
| April 12, 2015 | Illegal entries, loss of curtains, loss of wages. |
| 2015 | Tenant requested replaced refrigerator; replaced by smaller one after illegal entry. |
| 2015 | Ceiling bathroom repair incomplete: leak fixed only |
| April 2018 | Manager entered unit without authorization when tenant was ill; claim of repairs (mold) making tenant ill. |
| May 2018 | Fire alarm not working, manager attended and left door unlocked. |
| October 22, 2019 | Unauthorized entry by manager; manager damaged tenant's umbrella. |
| 2019 | New managers: shortly after tenant discovered items missing – drill gun and bits. Later, tenant discovered personal items missing (shoes); reported to manager. |
| November 25, 2019 | Tenant reported pests to manager; no remediation took place. |

| | |
|---|---|
| February 2020 | Tenant vacates after Notice, inspection conducted March 11, 2020 |

*5. Summary of Tenant's Additional Claims*

The tenant's additional claims are summarized under headings:

| | ***ITEM*** | ***AMOUNT*** |
|---|---|---|
| ***A*** | ***THEFT 2005*** | ***0*** |
| 1. | Theft of drill gun and drill bits stolen | $156.28 |
| 2. | Theft of shoes (6 x $100) | $600.00 |
| | | |
| *B* | ***DRY CLEANING 2003 and 2005*** | *0* |
| 3. | Dry cleaning of curtains (2003) | $168.53 |
| 4. | Dry cleaning of curtains (2005) | $122.86 |
| | | |
| *C* | ***ADMINISTRATIVE, WAGES AND MOVING*** | *0* |
| 5. | Photographs of damages (2020) | $57.32 |
| 6. | Photocopies of documents (2020) | $40.00 |
| 7. | Moving expenses (March 30, 2020) | $2,079.53 |
| 8. | Wage loss (2000) | $148.20 |
| | | |
| *D* | ***MICE*** | *0* |
| 9. | Mouse traps (November 2019) | 21.25 |
| 10. | Food damaged and eaten by mice (November 2019) | 138.20 |

| | | |
|---|---|---|
| *E* | ***DAMAGE BY LANDLORD*** | *0* |
| 11. | Replacement of broken umbrella (October 22, 2019) | 17.91 |
| 12. | Lock replacement (2019) | 17.67 |
| | *TOTAL* | *$3,567.75* |

During the 3-hours of the hearings, the tenant exhaustively described her claims. The tenant also confirmed that the above table and timeline accurately set out her claims and the history of the tenancy.

Each heading is addressed.

| ***A*** | ***THEFT*** | |
|---|---|---|
| *1.* | *Theft of drill gun and drill bits stolen* | *$156.28* |
| *2.* | *Theft of shoes (6 x $100)* | *$600.00* |

The tenant testified as follows. During 2005, two thefts in the apartment resulted in the above loss. The landlord had the only other key to the unit when the thefts occurred. The tenant assumed that the landlord was therefore responsible for the thefts.

With respect to the drill and bits, the tenant submitted a receipt for replacement. She estimated the value of the loss of shoes.

The tenant stated she informed the landlord of the thefts when they occurred and asked for reimbursement. The landlord denied her requests for compensation.

The landlord stated they were not responsible for the alleged thefts and the tenant’s conclusion they were accountable was unreasonable and unsubstantiated.

| | | |
|---|---|---|
| *B* | ***DRY CLEANING*** | |
| *3.* | *Dry cleaning of curtains (2003)* | *$168.53* |
| *4.* | *Dry cleaning of curtains (2005)* | *$122.86* |

The tenant testified as follows. Throughout the tenancy, there were issues with water leaking in the unit which caused damages to the tenant for which she seeks compensation. This includes drycleaning relating to water staining of curtains.

As referenced above, the tenant set out in detail the history of the leaking, and the failure to carry out effective long-term repairs in a timely manner.

In November 1990, a leak in the bedroom window started. This resulted in stains on the tenant's curtains and drycleaning expenses in 2003 and 2005 for which she sought reimbursement.

At the time of the leaking and staining, she requested compensation but was denied by the landlord.

As stated earlier, the tenant did not bring an application for compensation for the above expenses or for repairs during the tenancy.

The landlord testified as follows. As stated earlier, they denied they are responsible for any of the claimed expenses. They took all reasonable steps in a timely manner to stop the leaking in the tenant's unit as well as any other unit. They denied the leaking persisted throughout the tenancy and stated that each occasion of leaking was addressed. They expressed surprise that the tenant would reactivate old claims which had been considered and rejected. They said they had no previous information or notice that the tenant intended to pursue these claims. They said it was impossible at this late date to establish the surrounding facts and the circumstances of the claim. No records could be located.

| | | |
|---|---|---|
| *C* | ***ADMINISTRATIVE, WAGES AND MOVING*** | |
| *5.* | *Photographs of damages – taken at time of moving out* | *$57.32* |
| *6.* | *Photocopies of documents* | *$40.00* |
| *7.* | *Moving expenses* | *$2,079.53* |
| *8.* | *Wage loss* | *148.20* |

The tenant submitted evidence of having incurred the above expenses at and after the time of moving, February 27, 2020. She said she anticipated bringing a claim against the landlord and wanted evidence. She also incurred copying expenses for this claim.

With respect to the moving expenses, the tenant asserted she was "constructively evicted". That is, she was forced to give notice that she was moving out because the landlord refused to carry out requested repairs and maintenance. The tenant had no choice but to move. While she may have had to incur moving expenses at some time in the future, these claimed moving expenses were incurred because of wrongdoing of the landlord and the forced need to vacate.

The tenant claimed her expense for lost wages was due to the landlord's actions in failing to attend to their repair, inspection and compensation responsibilities.

The landlord asserted the claims could not be linked with any reasonable certainty to any of their wrongdoing for the reasons stated.

| | | |
|---|---|---|
| *D* | ***MICE (2019)*** | |
| *9.* | *Mouse traps* | *21.25* |
| *10.* | *Food damaged and eaten by mice* | *138.20* |

The tenant testified as follows. Mice were an ongoing problem in the unit throughout the tenancy. The landlord did not deal with the issue effectively after the caretaker was notified by the tenant of the issue. The landlord dealt with the problem in an adjacent unit but ignored her complaints.

As a result, the tenant incurred expenses for which she sought compensation. She had to purchase mouse traps to deal with the problem. She claimed her food was damaged by the mice and she incurred estimated expenses for food replacement.

The landlord stated as follows. They had no information from the tenant about the rodent infestation. They were not informed of the problem by the tenant in the several years prior to her moving out. If informed, the landlord would have responded quickly. It was the landlord's policy to address rodent infestation swiftly and effectively.

The landlord stated they took all reasonable steps in a timely manner to address any alleged rodent problems in the building. The landlord denied the tenant had reason to buy traps or that she lost food. They denied any unaddressed rodent infestation or receipt of notice.

| | | |
|---|---|---|
| *E* | ***DAMAGE BY LANDLORD*** | |
| *11.* | *Replacement of broken umbrella* | *17.91* |
| *12.* | *Lock replacement* | *17.67* |

The tenant claimed the landlord broke her umbrella when unlawfully entering her unit in 2015. She submitted a receipt in support of her claim for the cost of replacement.

The tenant claimed the landlord cut off the lock of her storage unit without her permission. She submitted a receipt in support of her claim for purchase of a new lock.

The landlord denied responsibility for either of these events. The landlord said they had never been notified of the claims. The tenant replied the landlord did the damage, should have known the loss occurred because of the landlord's own actions, and the tenant should be compensated.

Analysis

Only relevant, admissible evidence is considered. Only key facts and findings are referenced.

*Credibility*

Given the conflicting testimony, I have considered credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions.

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

Given the facts as I find them, I conclude the landlord was credible when they stated ignorance of the tenant's claims until she issued this application. I accept the landlord's testimony that, as far as they knew, the requests for repairs and assistance throughout the 39-years of the tenancy were addressed efficiently in a timely manner. The landlord

acknowledged the tenant in her materials provided complaints and receipts allegedly provided to the landlord; however, they reasonably concluded that all issues had been satisfactorily resolved. They had no notice to indicate otherwise. I find the landlord's understanding of events to be reasonable and believable

I find the evidence of the landlord is consistent with the probabilities that surround the tenancy. Therefore, where there is any conflict between the evidence of the parties, I prefer the landlord's evidence. I give the landlord's evidence the greatest weight.

*Standard of Proof*

Rule 6.6 of the Residential Tenancy Branch Rules of Procedures state 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.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to the tenant to prove their claims.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

*Four-part Test*

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 other party 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 claiming party proven the amount or value of their damage or loss?
4. Has the claiming party done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

*Responsibility of landlord*

The tenant has claimed that some of her claims for compensation are based upon the landlord's failure to ensure the unit was properly maintained.

*Policy Guideline 1 - Landlord and Tenant – Responsibility for Residential Premises states in part as follows:*

> The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property.
>
> Sections 7, 65 and 67 address compensation as follows:
>
> 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
>
> ---
>
> Director's orders: breach of Act, regulations or tenancy agreement
> 65 (1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

(a)…
(b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;
(c) that any money paid by a tenant to a landlord must be
(I) repaid to the tenant,
(ii) deducted from rent, or
(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;
…

Director's orders: compensation for damage or loss
67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

*Security Deposit – Landlord's Obligations*

Section 38 of the Act sets out a process for how deposits are managed after a tenancy ends. When a tenancy ends, the tenant must give the landlord their forwarding address in writing within one year of when the tenancy ended. Once the landlord has received the tenant's forwarding address, they have 15 days to:

- Return the deposit(s) with any interest to the tenant,
- Ask the tenant to agree in writing to any deductions and return the difference to the tenant, or
- Apply for dispute resolution asking to keep all or some of a deposit.

Section 38(6)(b) of the *Act* sets out what happens if the landlord does not do this. Then, the landlord must pay a monetary award, equivalent to double the value the 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).

*Security Deposit – Provision of Forwarding Address*

The Act provides that a tenant's provision of a forwarding address is a key component in the triggering of the landlord's obligation to return the security deposit.

Many tenants use the standard RTB form, Form RTB-47 (Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit). This 2-page form includes important information for both parties. The tenant fills out the form to inform the landlord where documents can be personally delivered, left, faxed, emailed or mailed. No provision is made in the form for a pick-up option.

The form provides important information to the landlord, such as the time for the return of the security deposit, and the consequences of failure to do so.

"Forwarding address" is defined by Merriam Webster:

> an address to be used for a person who moves to a different place so that any mail addressed to that person's old address can be sent on to him or her

I accept this definition is being a common sense meaning of the term as ordinarily understood and used.

The parties agreed as follows. The tenant notified the landlord she wanted to pick up the cheque for the security deposit at their business office. This did not occur. The tenant claimed this notification was provision of a forwarding address; that is, the landlord's business office was the forwarding address.

I do not accept the tenant's argument. I find the common sense meaning of "forwarding address" does not include telling the landlord the tenant will pick up the document. I find all notification before the delivery of Form RTB-47 did not amount to the provision of a forwarding address under the Act.

In consideration of the circumstances and facts as I find them, I find the tenant provided her forwarding address to the landlord in compliance with the Act on March 30, 2020. I find the landlord mailed the cheque on April 6, 2020, received by the tenant within the 15-day period following written notice.

*Security Deposit – Calculation of Interest*

The parties agreed the landlord used the RTB online tool to calculate interest on a security deposit. The landlord entered the amount of the security deposit of $150.00 along with the return date of April 6, 2021. The online tool provided the information that the calculated interest based on this information was $234.08. The landlord returned $150./00 plus $234.08 for a total of $384.08.

This online tool is found on the RTB website: http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html

The interest on deposits is determined by section 4 of the Residential Tenancy Regulation:

The rate of interest under section 38 (1) (c) of the Act [return of deposits] that is payable to a tenant on a security deposit or pet damage deposit is 4.5% below the prime lending rate of the principal banker to the Province on the first day of each calendar year, compounded annually.

Interest is calculated and incorporated into the online tool based on the rate set at the beginning of each year. Interest is compounded on the anniversary of the date the deposit was received by the landlord.

The percentages going back to 1974 are available to the public on the RTB website (see "How Interest is Calculated"): https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/ending-a-tenancy/returning-deposits.

I find the online RTB tool as used by the landlord properly calculated the interest rate payable by the landlord on the tenant’s security deposit.

I find the landlord returned the correct amount of the security deposit and interest to the tenant. I dismiss the tenant's claim for additional interest without leave to reapply.

*Estoppel*

I find that the legal principle of estoppel applies to the remainder of the tenant's claims for compensation.

Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. To return to a strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct and are not going to strictly enforce the right previously waived or not enforced.

The tenant submitted evidence of having provided adequate notice to the landlord of the claims.

However, I accept the landlord's credible testimony and find that the tenant did not provide the landlord notice within a reasonable time after occurrence and before the tenancy ended. I accept the testimony of the manager JH that the first notice from the tenant with respect to all of the remaining claims was when she filed this application. I find the tenant cannot now claim there was a breach of the tenancy agreement because of which the landlord must pay the tenant compensation. The tenant accepted the circumstances surrounding each of the remaining claims without adequately providing notice to the landlord.

I find the landlord reasonably assumed that the tenant had no claims when the tenant moved out, the inspection was done, and the security deposit returned. I find the landlord is prejudiced by the late notice and the tenant's conduct in accepting the landlord's conduct of their obligations. I find the tenant is prevented by the doctrine of estoppel from succeeding with the remaining claims.

Accordingly, I dismiss all the remainder of the claims without leave to reapply.

As the tenant has been unsuccessful, I do not award reimbursement of the filing fee.

While the tenant's claims with respect to the rodent infestation are dated 2019, closer in time to the date the tenant moved out, I find against the tenant. I accept the landlord's evidence that they received no notice and, if they had, they would have attended to the matter. I find there was no such rodent infestation or, if there was, it was dealt with in a timely manner by the landlord.

Similarly, while the tenant's claims for administrative, moving and wage loss are closer in time to the date the tenant moved out, I find the tenant has failed to meet the burden of proof under the first part of Step One of the 4-part test for these claims. As stated, I accept the landlord's evidence. I find the tenant has no allowable claim against the landlord with respect to any of these claims.

I also find the tenant was not constructively evicted, that is, she was forced to give notice that she was moving out because the landlord refused to carry out requested repairs and maintenance. I find the tenant has failed to meet the burden of proof that the landlord failed to meet their obligations in a timely manner.

In summary, I find the tenant is estopped from claiming compensation under these headings and further that she she has not met the burden of proof with respect thereto.

*Summary*

I dismiss the tenant's claims in their entirety without leave to reapply.

Conclusion

I dismiss the tenant's claim without leave to reapply.

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: February 1, 2023

Residential Tenancy Branch