



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNETC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and for monetary compensation for the landlord's failure to comply with the *Act* or use the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property; and to recover the filing fee from the landlord for the cost of the application.

Both tenants attended the hearing, one of whom gave affirmed testimony. The landlord was represented at the hearing by an agent and Legal Counsel, who also gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

During the course of the hearing I learned that the tenants do not take issue with the landlord using the rental unit for the purpose contained in the Two Month Notice to End Tenancy For Landlord's Use of Property, but seek compensation due to giving the landlord notice to end the tenancy earlier than the effective date of the landlord's Notice.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy

agreement, and more specifically for double the amount of the pet damage deposit?

- Have the tenants established a monetary claim as against the landlord for compensation required by law for the tenants ending the tenancy earlier than the effective date of the landlord's Two Month Notice to End Tenancy For Landlord's Use of Property?

### Background and Evidence

**The tenant** (CM) testified that this fixed-term tenancy began on July 31, 2019 and reverted to a month-to-month tenancy after May 31, 2020. The tenants vacated the rental unit on May 20, 2023. Rent in the amount of \$2,400.00 was payable on the 31<sup>st</sup> day of each month, which was raised to \$2,484.00 per month during the tenancy, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,200.00 as well as a pet damage deposit in the amount of \$1,200.00, which was collected sometime later. The rental unit is a condominium apartment and a copy of the tenancy agreement has been provided for this hearing.

The tenants provided the landlord with a forwarding address in writing by registered mail on May 23, 2023 and have provided for this hearing a copy of a Canada Post tracking document. The landlord returned \$2,000.00 of the deposits on October 5, 2023 and \$434.84 on October 11, 2023. The tenants did not agree to any deductions from the deposits.

During the tenancy the landlord served the tenants with a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice), a copy of which has been provided for this hearing. It is dated March 8, 2023 and contains an effective date of vacancy of May 31, 2023. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the landlord or the landlord's spouse.

The tenant testified that on April 26, 2023 the tenants advised the landlord by email that the tenants intended to vacate the rental unit on May 20, 2023. The tenants didn't pay rent for the month of May, 2023, and told the landlord that they were entitled to reimbursement of \$910.00, however that was an error, and the tenants claim compensation in the amount of \$881.43.

The parties had attended a hearing previously concerning an application made by the landlord, including authorization to keep the pet damage deposit, but not for damage caused by a pet. The tenants claim double the amount of the pet damage deposit.

**The landlord's agent and Legal Counsel** testified that the landlord does not argue the compensation claimed of \$881.43, but does not agree to double the amount of the pet damage deposit. There is no requirement under the *Act* that the landlord had to be successful with the application. The Arbitrator decided it should be returned to the tenants, and at that hearing, no application was made or mentioned by the tenants or the Arbitrator about double the amount. The landlord's application was made on time, and when ordered, the landlord paid it to the tenants. The landlord made the application within the time required under the *Act*, but could not have known that it would be refused at arbitration until the resulting Decision was received.

### Analysis

Firstly, the landlord does not argue the \$881.43 claim for compensation. The law permits a tenant to end the tenancy earlier than the effective date of the landlord's Notice, and pay rent to the end of that 10 day period, and the landlord is still required to compensate the tenants the equivalent of 1 month's rent. The landlord accepted the tenant's notice to vacate, and the tenants were to pay rent to May 20, 2023. Since rent was payable on the last day of each month, the tenants were required to pay 21 days rent, which on a per diem basis is \$80.13 ( $\$2,484.00 / 31 = \$80.13$ ), for a total of \$1,682.71. The landlord was still obligated to pay 1 month's rent as compensation, or \$2,434.00. The tenants didn't pay rent for the month of May, 2023 and I find that the landlord is required to pay compensation to the tenants for the difference of **\$801.29** ( $\$2,484.00 - \$1,682.71 = \$801.29$ ).

During the hearing, I advised the parties that I would read the previous Decision to ensure that I do not make any findings or orders on matters that have already been adjudicated upon. I have read the previous Decision dated September 29, 2023. In that matter the landlord had applied for a monetary order for unpaid rent, authorization to retain the security deposit and pet damage deposit and to recover the filing fee from the tenants. The Arbitrator made a finding that the tenants were entitled to compensation in the amount of 1 month's rent, and were entitled to end the tenancy early by giving at least 10 days' written notice. The landlord's application was dismissed and the landlord was ordered to return the deposits to the tenants.

I agree with Legal Counsel for the landlord that the landlord did not have to be successful with the application to claim against the security deposit; the landlord's right to make that claim was not extinguished because it was not a claim for damages.

The Decision of September 29, 2023 states that the tenants are entitled to return of the security deposit and pet damage deposit, plus interest, for a total of \$2,434.84. The landlord returned that sum to the tenants in 2 installments on October 5, 2023 and October 11, 2023. The tenants have provided proof of providing the landlord with the tenants' forwarding address in writing by registered mail, which is deemed under Section 88 of the *Act* to have been received on May 28, 2023.

The Decision of September 29, 2023 does not indicate that the tenants had made any application. Therefore, the Arbitrator could not rule on the tenants' claim for double the amount of the pet damage deposit, but having dismissed the landlord's application to keep the deposits, ordered that the landlord return them. I refer to Residential Tenancy Policy Guideline 31 – Pet Damage Deposits, which states, in part:

The landlord may apply to an arbitrator to keep all or a portion of the deposit but only to pay for damage caused by a pet. The application must be made within the later of 15 days after the end of the tenancy or 15 days after the tenant has provided a forwarding address in writing.

If a landlord is required to return a pet damage deposit and fails to do so, the tenant may apply to an arbitrator for an order for double the amount of the deposit plus any statutory interest.

Since the landlord had not applied to keep the pet damage deposit for damage caused by a pet, the landlord had an obligation to return the pet damage deposit to the tenants within 15 days of the later of the date that the tenancy ended or the date that the landlord received the tenants' forwarding address in writing. In this case, the tenancy ended on May 20, 2023 and the landlord received the tenants' forwarding address in writing on May 28, 2023, 5 days after mailing. The landlord returned the deposits in October, 2023, clearly beyond 15 days.

The tenants have now made the application for double the amount of the pet damage deposit, and have already been awarded the amount of the deposit(s) and interest. I find that the tenants are entitled to double the amount of the pet damage deposit, or **\$1,200.00**, being the remaining doubled amount.

Since the tenants have been successful with the application the tenants are also entitled to recover the **\$100.00** filing fee from the landlord.

I grant a monetary order in favour of the tenants as against the landlord in the amount of **\$2,101.29**. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Tenancy Residential Act* in the amount of \$2,101.29.

This order is final and binding and may be enforced.

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: January 20, 2024

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Residential Tenancy Branch