



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, MNSD, & FF

### Introduction

This hearing dealt with the tenant's application seeking compensation due to the landlord's breach of the *Act*. The tenant alleges that the landlord failed to use the rental unit for the stated purpose provided in the 2 month Notice to End Tenancy and that the landlord failed to pay interest on the security deposit originally paid at the start of the tenancy.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

### Issue(s) to be Decided

Has the landlord used the rental unit for the stated purpose identified on the 2 month Notice to End Tenancy within a reasonable time period after the tenancy ended?

### Background and Evidence

This was a long term tenancy which lasted for approximately 10 years. On March 18, 2010 the tenant received a 2 month Notice to End Tenancy for Landlord's Use of the Rental Unit. The stated purpose on the notice to end tenancy was that the landlord, or a close family member of the landlord, would be occupying the rental unit.

In addition to the notice to end tenancy the landlord's also provided the tenant with a written letter which explained that the rental unit would be occupied by the landlords' son. The letter thanked the tenant for the long term tenancy and confirmed that the tenant was entitled to the equivalent of 1 month's rent. The effective date of the notice was May 31, 2010.

The tenant did not dispute the notice to end tenancy but instead sought out other accommodations in the same building. The tenant explained how she was successful in

finding a new apartment in the building but only days before the end of May she was informed by her new landlord that he did not have permission with the strata corporation to rent the unit and the new landlord could not fulfil the tenancy agreement. The tenant was seeking costs related to these events as part of this dispute resolution hearing.

At the end of the tenancy, the tenant explained that the landlords failed to appear for the move out condition inspection and also failed to provide the tenant with her security deposit when the parties did meet on June 1, 2010. During the hearing the tenant confirmed that the security deposit was subsequently returned and both parties confirmed that interest in the amount of \$34.15 had not been paid to the tenant.

The tenant became suspicious of the landlords' intentions when she observed that no one was moving in on June 1, 2010 while she was meeting with the landlords. The tenant submits that to the date of the hearing there has been no one living in the rental unit.

The landlord's agent (the agent) confirmed that the rental unit has remained vacate since the tenancy ended. The agent stated that the rental unit has been vacant due to a flood which occurred in the building and damaged the rental unit. The agent confirmed that he was to occupy the rental unit at the end of June once his tenancy agreement ended. The agent did not know why the tenant believed that the rental unit would be occupied immediately on June 1, 2010 as this was never the intention. The landlord had intended, and did replace the carpet in the unit, prior to the date that the agent was to occupy the unit.

At the end of June the rental unit was flooded causing damage to the new flooring that the landlord had just installed in the rental unit and water damage to the drywall. The rental unit has been undergoing repairs since late June which are only now being finalized. The agent was unable to explain why the repairs were taking so long to complete but indicated that all the work was being completed through the remediation company and the strata.

The agent stated that as a result of these unfortunate events he was unable to move into the rental unit. Now that the repairs are completed another close family member of the landlords is to move into the rental unit. The landlords submitted that the rental unit has not been used for the stated purpose due to unforeseeable circumstances which were beyond the control of the landlords and that the tenant should not be compensated pursuant to section 51(2) of the Act.

### Analysis

Section 51 (2) of the *Act* states that if a landlord does not use the rental unit for the stated purpose in the notice to end tenancy in a *reasonable amount of time* and for at least 6 months then the tenant is entitled to compensation equivalent to two month's rent under the tenancy agreement.

The requirement to use the rental unit for the stated purpose is to be within a reasonable period after the effective date of the 2 month Notice to End Tenancy for Landlord's Use of the Rental Unit pursuant to section 49 of the *Act*.

Based on the evidence before me I am satisfied that up to at least the date of this proceeding, November 15, 2010, the rental unit has not been occupied by the landlord or a close family member of the landlord.

I acknowledge that the landlord did not utilize the property for the first month to replace some flooring. I also acknowledge that the rental unit was then damaged by a flood at the end of June 2010. However, I am not satisfied or persuaded that the rental unit remained uninhabitable for 5 consecutive months after this. The landlord provided no evidence to suggest that the rental unit could not be occupied during the repairs and provided no reasonable explanation as to why repairs have taken 5 months.

I accept from the landlord's agent's testimony that the repairs took so long because it was not a priority of the landlord to complete. However, as a result of their choice to leave the rental unit vacate and not pursue the repairs diligently resulted in the rental unit not being used for the stated reason in the 2 month Notice to End Tenancy.

I find the tenant is entitled to compensation the equivalent to 2 month's rent, or the amount of \$2,100.00. I also find that the tenant is entitled to the accumulated interest on her security deposit for the sum of \$34.15 plus the recovery of the \$50.00 filing fee paid for this application for a total sum of \$2,184.15.

I dismiss the tenant's claims related to storage as these alleged damages arose out of a tenancy agreement with a different landlord.

### Conclusion

I grant the tenant's application having determined that the landlords failed to use the rental unit within a reasonable time frame for the stated purpose on the 2 month Notice to End Tenancy for Landlord's Use of the Rental Unit.

I find that the tenant has established a monetary claim due to breach of the *Act* for the sum of **\$2,184.15**. This Order may be served on the landlords. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: December 08, 2010.

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Dispute Resolution Officer