



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNDC, OLC, & FF

### Introduction

This hearing dealt with an application by the tenants seeking compensation equivalent to two month's rent pursuant to section 51(2) of the *Act*. The tenants claim that the landlord has not used the rental unit for the stated purpose identified in the two month Notice to End Tenancy for Landlord's Use of the Rental Unit issued on July 7, 2010.

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

Did the parties mutually agree to set aside the 2 month Notice to End Tenancy for Landlord's Use of the Rental Unit?

Did the landlord use the rental unit for the stated purpose identified in the Notice to End Tenancy?

### Background and Evidence

This tenancy began as a fixed term lease commencing May 1, 2009 ending effective April 30, 2010 for the monthly rent of \$1,500.00. After April 30, 2010 the tenancy continued on a month to month basis. The tenants paid a \$750.00 security deposit on April 16, 2009 and subsequently paid a pet deposit of \$750.00 in June 2010.

On June 16, 2010 the tenants received written notice of a rent increase from the landlord which was to come into effect on October 1, 2010. Then on July 7, 2010 the tenants received a 2 month Notice to End Tenancy for Landlord's Use of the Rental Unit. The purpose of the notice was for a close family member of the landlord to move into the rental unit.

After the 2 month Notice to End Tenancy was issued to the tenants, the parties entered into discussions to cancel the notice and to reach a new tenancy agreement. The landlord provided a copy of an e-mail where the proposed terms of the new tenancy agreement were outlined as follows:

- For a fixed term commencing September 1, 2010 to September 1, 2011; and
- The new monthly rent of \$1,650.00.

The tenants were apparently concerned about an additional term which would allow the landlord or the tenant to end the tenancy with thirty days notice. The tenants argued that no agreement was reached and that they were concerned about the landlord wanting to change the terms of their agreement. The tenants decided to give their notice to end the tenancy pursuant to section 49 of the *Act* and vacated the rental unit as of July 31, 2010.

The tenant requested that the landlord provide them with compensation equivalent to one month's rent further to the notice to end tenancy. Although the landlord did not believe that the compensation was required, she did issue the money at the tenants' request.

The landlord argued that the Notice to End Tenancy was cancelled or void as a result of the tenants' agreement to discuss a new tenancy agreement. The landlord stated that almost immediately after issuing the notice to end tenancy she learned that her daughter's circumstances had changed and she would not be able to occupy the rental unit and as a result she was willing to enter into a new tenancy agreement with the tenants for a one year lease. The landlord stated that the tenants were aware that the unit would not be used as stated and after their attempts to negotiate a new tenancy collapsed the landlord advertized for new renters.

The tenants argued that the landlord was never acting in good faith and was always seeking a means to raise the rent. The tenants submit that the landlord's action of collecting the pet deposit after the tenancy had been in effect for one year and the landlord's notice of a rent increase only a couple of weeks prior to issuing the 2 month notice to end tenancy demonstrate the underlying motive of the landlord in issuing the notice.

### Analysis

Based on the evidence before me and the balance of probabilities, I find as follows:

Section 51(2) of the *Act* states:

In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I find that the Notice to End Tenancy remained valid and was not set aside or cancelled by the parties. Once the notice was issued the tenancy could only have been reinstated by the agreement of both the landlord and the tenants and this did not occur. The parties failed to agree to cancel the notice because they were attempting to reach terms for a new tenancy agreement. The tenants acted upon the notice and gave their notice to end tenancy pursuant to section 50(1) of the *Act*.

I do not accept the argument of the landlord that the notice was cancelled based on the parties contemplating a new tenancy agreement. I find that the landlord placed the tenants in an unfair position by negotiating a new tenancy after issuing a notice to end tenancy. If the landlord wanted to reach an agreement to set aside the notice, it should have been done based on the original tenancy continuing under the same terms. Instead the landlord, intentionally or not, was leveraging the end of the tenancy as part of obtaining an increase in the monthly rent. This was unconscionable.

I find that the 2 month Notice to End Tenancy for Landlord's Use remained in effect and the landlord remained legally bound to utilizing the notice for the stated purpose, even though the landlord's circumstances had changed. The landlord should have ensured that the unit was going to be utilized for the stated purpose before issuing the notice.

The evidence is clear that the landlord did not use the rental unit for the purpose stated on the notice to end tenancy. Pursuant to section 51(2) of the *Act* I find that the landlord must pay the tenants compensation in the amount of \$3,000.00 for not using the rental unit for the stated purpose within a reasonable period after the effective date of the notice to end tenancy. I also order that the landlord reimburse the tenants the \$50.00 for the filing fee paid for this application.

Conclusion

The tenants' application is granted and I have issued the tenants a monetary Order in the amount of **\$3,050.00**. 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: February 24, 2011.

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Residential Tenancy Branch