



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing was convened on the tenants' application of April 26, 2012 for monetary compensation in the equivalent of two months' rent on the grounds that the landlord did not use the rental unit for a purpose stated in a Notice to End Tenancy for landlord use under section 49 of the *Act*

### Issues to be Decided

Did the landlords use the rental unit for the purpose stated on the Notice to End Tenancy for landlord use for six months following the end of the tenancy or did they take steps toward accomplishing that purpose within a reasonable time after the effective date of the notice?

### Background and Evidence

This tenancy began on December 1, 2004 and ended during the last week of August of 2012 pursuant to a Notice to End Tenancy for landlord use dated June 22, 2012. Rent was \$1,450 at the end of the tenancy, the landlord's held a security deposit of \$690, and the tenants received the one-month's free rent provided for tenants who receive a notice to end for landlord use. As a matter of note, the present landlords purchased the property with possession in June of 2010 at which time they signed a new rental agreement.

During the hearing, the landlord submitted substantial and uncontested evidence that in May of 2012, he had begun preparations to open a residential day care center in the rental unit. The evidence included documentation substantiating that the landlords had engaged a person to operate the day care center had begun the application process for licensing from the city.

However, the plans came to an end in August of 2012 when the landlords and designated operator learned that the rental unit could only be licensed for a maximum of five clients whereas their business plan had shown they needed at least seven for the operation to be viable.

The attending landlord stated that, at that time, the tenants were already too advanced in their moving preparations to reverse the Notice to End Tenancy.

The landlord then advertised the rental unit and was able to find new tenants for September 2012 at a rent of \$1,650 per month.

I noted that the Notice to End Tenancy for landlord use had stated that the reason for ending the tenancy was to make the rental unit available for occupancy for the landlord or a close family member. The notice also includes an option for ending the tenancy when a landlord "has all necessary permits and approvals required by law to convert the rental unit to a non-residential use."

The landlord stated that he did not use the latter provision because the residential day care licensing rules required that the applicant had residency in the rental unit. The tenants concurred that the landlord had disclosed the day care proposal to them verbally. In fact, neither the landlords nor a close family member occupied the rental unit.

### Analysis

As noted, section 49(3) and section 49(6)(f) permit the landlord to issue a notice to end tenancy respectively for landlord use for occupancy by the landlord or close family member, and/or to convert the rental unit to a non-residential use.

Section 51(2) of the *Act* provides that 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.

In the present matter, I find that neither the landlords nor qualifying close family member ever moved into the rental unit as was proposed in the Notice to End Tenancy. I further find, that even if the notice had been served to permit conversion of the rental unit to a non-residential use, the landlords did not have the approvals and permits in place before issuing the notice as required by section 49(6)(f) of the *Act*.

I find that the rental unit was not used for the purpose stated on the Notice to End Tenancy of June 22, 2012 for a period of six months, and was, in fact, rented to new tenants immediately following the subject tenancy.

Therefore, I find that the tenants are entitled to compensation in the equivalent of two months' rent as prescribed by section 51(2) of the *Act*. As rent was \$1,450 per month, the total award to the tenants is \$2,900.

### Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$2,900 for service on the landlords.

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: June 21, 2012.

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Residential Tenancy Branch