



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNC, MNDC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end the tenancy for cause and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The landlord and both tenants attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other with respect to the evidence and testimony given.

At the commencement of the hearing, the parties agreed that the tenants have vacated the rental unit, and therefore I find that the tenancy has ended and the tenants' application for an order cancelling a notice to end the tenancy is dismissed.

The parties have provided evidentiary material prior to the commencement of this hearing, however the landlord did not provide any evidentiary material to the tenants and indicated that she did not know where to send it. The landlord had an obligation to attempt to serve that material at the last known address of the tenants. Since the landlord has not done so, I decline to consider the landlord's evidentiary material.

### Issues to be Decided

The issue remaining to be decided is:

- 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 compensation for ending the tenancy for landlord's use of property?

### Background and Evidence

**The first tenant** testified that this month-to-month tenancy began on August 1, 2015 and ended on September 30, 2015. No written tenancy agreement was signed by the parties, however rent in the amount of \$1,360.00 per month was payable the day before the first day of each month, and there are no rental arrears. The landlord collected a security deposit from the tenants at the commencement of the tenancy, and the parties have dealt with return of it by mutual consent. The rental unit is the upper floor of a house and the basement suite was also tenanted at the time of this tenancy.

The tenant further testified that she and the landlord had discussions, and on September 7, 2015 the landlord had asked the tenants to sign a tenancy agreement, but none was signed.

On September 10, 2015 the landlord sent a text message to the tenant stating that the tenants would have to move out because the landlord needed the rental unit for family. The tenant texted the landlord back stating that under the *Residential Tenancy Act* the landlord had to give 2 months notice and provide one month of rent as compensation to the tenants. The landlord refused and then emailed the tenants stating that they were evicted for having too many guests. The tenant disagreed with an email eviction and told the landlord that there is an approved form. The landlord replied that she would send it in the mail, however the tenants received a 1 Month Notice to End Tenancy for Cause for breaching an agreement, which the parties didn't have. A copy of the notice has been provided and it is dated September 12, 2015 and contains an effective date of vacancy of November 31, 2015. The reason for issuing it is: "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." The tenant testified that it was received sometime near the end of September, 2015.

The tenants moved out of the rental unit for the landlord's family, and then they didn't move in. Neighbours have told the tenant that the landlord renovated all hours of the night and told the neighbour that friends were moving in. However, the landlord had told the tenants that in-laws were moving in. The tenants claim the equivalent of 1 month's rent as compensation for the landlord's use of the property.

**The second tenant** testified that the tenants were disappointed when the landlord told the tenants they had to move out for the landlord's family members, but the tenants did so very soon after the tenancy had begun. The landlord apologized and offered to pay part of moving costs, utilities and part of the rent, but didn't do so. Then the tenants found out that the landlord had served the wrong form and family members never did move in.

**The landlord** testified that when she had told the tenants about family moving in, it was true, but found out that the tenants moved another family into the rental unit without the landlord's knowledge. The family had been there for 10 days before the landlord found out, and 4 days later they were still there and had moved belongings in. The tenants told the landlord that the family had an address so the landlord asked for it as proof, but none was provided.

The landlord had intended to give a 2 Month Notice to End Tenancy for Landlord's Use of Property, but found out that the tenants were lying about the family living there so the landlord issued a 1 Month Notice to End Tenancy for Cause instead. The landlord spoke to the tenants again and they said they would move out at the end of November, but actually moved out on September 26, 2015 without any notice to the landlord. The landlord had agreed to pay some costs, but the tenants declined it and moved out prior to the agreed date and the landlord was left with one month of unpaid rent.

### Analysis

Where a landlord serves a 2 Month Notice to End Tenancy for Landlord's Use of Property, the landlord is obligated to provide the equivalent of 1 month's rent as compensation. A tenant then may end the tenancy earlier than the effective date of the landlord's notice by giving the landlord 10 days written notice and then pay rent to the date of departure, and the landlord is still required to provide the compensation. A landlord may only end the tenancy for close family members, not in-laws, cousins, brothers, sisters, etc. Close family members are mother, father or child of the landlord or of the landlord's spouse.

In this case, the landlord served a 1 Month Notice to End Tenancy for Cause. If a landlord does not serve a 2 Month Notice to End Tenancy for Landlord's Use of Property, the landlord is not obligated to provide compensation to the tenants.

The tenants disputed the landlord's notice, however vacated the rental unit prior to this hearing. In the circumstances, I am not satisfied that the landlord has established the reason for issuing the notice, but that is not the application remaining before me. Since the landlord did not issue a notice for the landlord's use of property, the tenants are not entitled to compensation. Therefore, I dismiss the tenants' application.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed.

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: November 19, 2015

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Residential Tenancy Branch

