



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNSD, MNDC, OLC, FF

### 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 landlord's use of property; for a monetary order for return of all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for recovery of the filing fee for the cost of the application; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Both tenants and the landlord attended the hearing, and the landlord was assisted by an agent who interpreted the landlord's testimony. The landlord also called one witness. The parties and the witness each gave affirmed testimony and the parties were given the opportunity to question each other and the witness respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

At the outset of the hearing, the tenants withdrew the applications for an order cancelling a notice to end the tenancy for landlord's use of property and for a monetary order for return of all or part of the pet damage deposit or security deposit.

### Issue(s) to be Decided

The issues remaining to be decided are:

- 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?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

### Background and Evidence

The parties agree that this month-to-month tenancy began on July 1, 2015 and the tenants moved out of the rental unit on December 12, 2015. Rent in the amount of \$700.00 per month was payable on the 1<sup>st</sup> day of each month 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 \$350.00 which has been returned to the tenants in full. No written tenancy agreement exists. The rental unit is a basement suite and the landlord resides in the upper level of the home.

The landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the notice) on October 16, 2015 by handing it directly to one of the tenants. A copy of the notice has been provided and it is dated October 15, 2015 and contains an effective date of vacancy of December 31, 2015. The reason for issuing the notice is: "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (mother, father or child) of the landlord or the landlord's spouse."

The tenants both testified that prior to the beginning of the tenancy the tenants told the landlord that they expected to reside in the rental unit for a couple of years. However, the landlord ended the tenancy by issuing the notice and ought to have advised the tenants that a family member would be moving in and that the tenants would only be able to stay short-term.

No rent was paid for December, 2015 and the tenants claim half a month's rent as compensation as well as \$150.00 for moving expenses to move in and \$150.00 for moving expenses to move out; \$50.00 for carpet cleaning and recovery of the \$50.00 filing fee.

The landlord testified that the tenants didn't pay rent for December, 2015. Further, the notice was given on the 16<sup>th</sup> of the month and therefore, the tenants were given more than 2 months notice so they shouldn't get another half month's rent.

The landlord's witness testified that the tenants were in the suite for 4 or 5 months using gas and hydro. The witness is the daughter of the landlord and testified that her sister moved to Canada and the whole family is occupying the entire house including the rental unit.

The witness also testified that when the tenants moved in, the parties had a conversation wherein the tenants were told that if the witness' sister obtained a Visa,

the tenants would have to move out, and the tenants were fine with that as long as they got 2 months notice.

### Analysis

The *Residential Tenancy Act* requires a landlord who gives a 2 Month Notice to End Tenancy for Landlord's Use of Property to a tenant, to pay compensation to the tenant equivalent to one month's rent. That is often accomplished by not charging the tenant any rent for the last month of the tenancy. However, the *Act* also states that once the notice is given, the tenant may move out earlier by giving the landlord 10 days written notice and must pay the landlord rent to the effective date of the tenant's notice, and the landlord is still obligated to provide the tenant with the equivalent of one month's rent.

In this case, the landlord gave the notice on October 16, 2015. The tenants paid rent for November but not for December and moved out on December 12, 2015. However, the tenants did not give the landlord 10 days written notice to vacate the rental unit earlier than the effective date of the notice, and did not pay any rent for December. Therefore, I find that the landlord has already provided the tenants with the compensation equivalent of one month's rent and the tenants' application for half a months' rent is dismissed.

The tenants seek monetary compensation for the landlord's failure to notify the tenants that it may be a short-term tenancy, however the landlord's witness testified that the parties had a conversation wherein the tenants were advised that the landlord's daughter may move to Canada and the tenants would have to vacate when that happened. The witness also testified that the tenants were fine with that as long as they got 2 months notice. The tenants deny that, however, where it boils down to one person's word over another, the claim has not been proven. Therefore, I find that the tenants have failed to establish a claim for moving expenses.

The tenants have not provided any evidence of the cost of carpet cleaning, and therefore, I dismiss that portion of the application.

The tenants have vacated the rental unit and have not established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and I dismiss that portion of the claim.

Since the tenants have not been successful with the application, the tenants are not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenants' application for an order cancelling a notice to end the tenancy for landlord's use of property is hereby dismissed as withdrawn.

The tenants' application for a monetary order for return of all or part of the pet damage deposit or security deposit is hereby dismissed as withdrawn.

The balance of 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: December 18, 2015

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Residential Tenancy Branch

