



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated January 31, 2016,
- b. A monetary order in the sum of \$23,400
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 2 month Notice to End Tenancy was served on the Tenants by mailing, by registered mail to where the Tenants reside on February 22, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the Landlords by mailing, by registered mail to where the Landlords reside on March 7, 2016.

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated January 31 2016?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

On August 1, 2013 the parties entered into a 2 year fixed term tenancy agreement that provided that the tenancy would start on September 1, 2013, end on August 31, 2015 and become month to month after that. The rent was set at \$750 per month payable in

advance on the first day of each month. The tenants paid a security deposit of \$375 and a pet damage deposit of \$375 at the start of the tenancy.

After the expiry of the fixed term portion of the lease the parties discussed the possibility of the landlords selling the rental property to the tenants and about the possibility of a fixed term tenancy that would end on April 30, 2016. The parties were unable to come to an agreement about the sale of the rental unit. The tenants decided they wished to continue on a month to month basis

The landlord testified the rental unit is their summer home and they wished to return to it this summer. He testified the property was purchased in 2007. They have lived in the rental property as a summer home for the first two years. It was rented for a year in 2009. From 2010 to 2013 they lived in year round. They subsequently moved to the lower mainland. However, they now wished to regain possession for their personal use.

The tenant gave evidence disputing the landlords' decision to regain possession as follows:

- The landlords' relationship with them has been inconsistent. At times they have indicated they might be prepared to sell it to the tenants. However, they have not provided the tenants with a price which they would accept. At other times they indicated they were prepared to enter into a long term lease with the Tenants.
- The rental unit needs major repairs including the roof, foundations etc. The landlord will not be living in the rental unit during the course of the construction.

Grounds for Termination:

The Notice to End Tenancy relies on the following:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

After carefully considering all of the evidence I determined the landlords have established sufficient grounds to end the tenancy. I accept the testimony of the landlords that they intend to regain possession in order for them to live in it based on the following evidence:

- The landlords have used the rental unit as a summer home and year round home for many years in the past.
- In the e-mails to the tenants the landlords were prepared to enter into a fixed term tenancy but the tenancy would have to end on April 30, 2016. The ending

of the tenancy on that date has been in the contemplation of the landlords after the expiry of the fixed term portion of the lease.

- I accept the testimony of the landlords that they wished to live in the rental unit. I do not find it unusual that a landlord who previously lived in a summer home and year round might want to return to it.
- The testimony of the tenants that the rental unit needs major repairs does not detract from the testimony of the landlords of their desire to regain possession in order for them to move in.

#### Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the 2 month Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

#### Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective April 30, 2016. .

#### Tenants' Application for a Monetary Order and Cost of Filing fee

With respect to each of the Tenants claims for a monetary order I find as follows:

- a. The tenants claimed the sum of \$7200 (\$225 per month multiplied by 32 months) for 3/8 of the house taken up by the landlord's furniture. The tenants testified that the landlords failed to remove many of their belongings and this reduced the enjoyment of the rental unit as they were not able to use their own belongings. In particular the tenants testified the landlord left the following furniture: 2 large leather couches, an entertainment centre, living room table, benches, tables, hutch, kitchen table and chairs, set of chairs in their son's room. The tenant testified they squeezed their belongings around the landlords. He testified he only agreed to the landlord leaving the pool table and riding lawnmower.

The landlord disputes this evidence. He testified that prior to taking possession of the house the parties went through it and identified which items the tenants wanted to use and which they wanted the landlord to remove. In particular the tenants did not wish to use the microwave and dishwasher. Those items were removed and placed in storage. The tenants were always aware that the landlord was going to use one of the rooms in the basement for storage. They

initially wanted to use the mattresses but the landlord's refused. The landlord testified they were originally asking \$800 a month for the rental unit. The tenants offered \$700 a month (which was the price a few years earlier). The parties agreed to \$750 per month on the basis that the landlord could store some of their belongings.

The tenant testified that on a number of occasions he asked the landlord to move their belongings.

After carefully considering the disputed evidence I determined the tenant failed to prove this claim and accordingly it is dismissed for the following reasons:

- I accept the testimony of the landlord that the parties went through the furnishings in the house and the tenant decided they wanted to keep some but not others (the microwave and dishwasher). The tenants did not dispute this evidence of the landlord.
  - I accept the testimony of the landlord that all times the parties were aware the landlords were going to store some of their belongings.
  - The Application for Dispute Resolution filed by the Tenants states "When we asked about the items still in the house D replied "P and I decided since we took off \$50 we are storing our stuff in the room downstairs. The items upstairs are too heavy but feel free to move the things downstairs if you want.'" It states we were taken back and didn't want to argue the day we were moving in. While the tenants may not have been happy about storing the possessions they have taken advantage of the \$50 per month reduction in rent.
  - Further, I determined the tenants failed to mitigate their losses. They could have removed the belongings and charged landlord the cost of moving them downstairs. Alternatively the tenants could have filed an Application for Dispute Resolution seeking an order that the landlord remove their belongings in the early stages of the tenancy.
  - The photographs and testimony indicate that the tenants used many of the landlords' furnishings in their day to day use.
  - The tenants' claim involved many items which could have easily been moved to the basement if they wanted to free space.
- b. The tenants claimed the sum of \$10,400 (\$325 for no use of the basement bedrooms for 32 months). I determined the tenants failed to prove this claim. I am satisfied based on the evidence presented that the parties agreed the landlord could store some of their belongings in one of the rooms in the

basement. The landlord stored mattresses and a number of items. The tenants did not object at the time. The tenants took advantage of the \$50 per month rent reduction. The tenants failed to mitigate their loss by applying for arbitration or giving the landlord's notice they would be removing the belongings if the landlord's failed to remove them on their own and then charging the costs associated with the removal..

- c. The tenants claimed the sum of \$4500 (being unable to use 2 upstairs bedrooms for 5 months of the year caused by the lack of insulation and freezing temperatures. I am satisfied the tenants advised the landlord of the problem with the lack of insulation and the challenges this would have for the winter. I do not accept the landlord's explanation that the wood stove was a satisfactory answer for the lack of heat. The tenants testified their son slept with them through the winter months. I determined the tenants are entitled to compensation in the sum of \$75 per month for 5 months for a total of \$375. I determined it is not appropriate to award anything further for this claim as the tenants failed to mitigate by advising the landlord or the problem in a timely manner and failed to file an Application for Dispute Resolution during the early stage to the tenancy. I determined that 5 months is a reasonable time for the application to be heard, the matter adjudicated and an order issued and repairs to be made.
- d. The tenants claim the sum of \$800 for the lack of use of the front deck stairs (\$25 a month for 32 months). I determined the tenants are entitled to \$150 for the lack of use of the front deck stairs. I determined it was not appropriate to award anything further for this claim as the tenants failed to prove they asked the landlord to make the repairs or filed an Application for Dispute Resolution in a timely way. At one stage the tenant was offering to do the work himself and the tenant failed to clearly state he was no longer prepared to do it.
- e. I dismissed the tenants claimed the sum of \$500 for pain and suffering and inconvenience for the following reasons:
  - The tenants failed to provide particulars as to what this claim is composed of.
  - The tenants failed to produce medical evidence to support this claim.
  - Much of what is claimed involves normal interactions between contracting parties. The tenants complained about the inconsistent way the landlord dealt with them. The landlords were not legally obligated to sell the property to them. The tenants did not make an offer to buy. Similarly, the tenants chose they wanted to renew the

lease on a month to month basis. The landlords do not have a legal duty to allow the renewal of the lease on a long term basis.

- The landlords do not have a legal duty to open up an account at a hardware store for the tenant's use. It would be foolish for a landlord to do so as there is a significant risk that a tenant might take advantage of the landlord.

Conclusion:

In summary I dismissed the tenants' application to cancel the two month Notice to End Tenancy and I granted an Order for Possession effective April 30, 2016. I ordered that the landlord pay to the tenants the sum of \$525 for the reduced value of the tenancy plus \$50 for the cost of the filing fee (reduced to reflect the limited success of the Tenants for a total of \$575.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: April 15, 2016

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Residential Tenancy Branch