



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1630 Chesterfield Avenue Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

CNL, MNDC, OLC, and FF

### Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants filed an application to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property, for an Order requiring the Landlord to comply with the *Residential Tenancy Act* (Act), and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Tenant withdrew the application to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property, as the rental unit has been vacated.

On August 30, 2017 the Tenants submitted an Amendment to an Application for Dispute Resolution, in which they withdrew their application to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property and they added a claim for compensation because the Landlord has not used the rental unit for the purpose for ending the tenancy that was stated in the Notice to End Tenancy.

The Agent for the Tenant stated that on July 12, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents.

On August 30, 2017 the Tenant submitted an Amendment to an Application for Dispute Resolution, in which she added a claim for a monetary Order, and 40 pages of evidence. The Agent for the Tenant stated that these documents were served to the Landlord, via registered mail, on August 31, 2017. The Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

### Issue(s) to be Decided

Are the Tenants entitled to compensation pursuant to section 51(2) of the *Act* because steps were not 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 the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

### Background and Evidence

The Landlord and the Tenants agree that when this tenancy ended the Tenants were paying monthly rent of \$1,000.00.

The Agent for the Landlord stated that a Two Month Notice to End Tenancy for Landlord's Use, served pursuant to section 49 of the *Act*, was posted on the Tenants' door on June 27, 2017. The Agent for the Tenant stated that this Notice was received by the Tenant on the date it was posted.

The Landlord and the Tenants agree that the Two Month Notice to End Tenancy declared that the tenancy was ending because the unit would be occupied by the Landlord or a close family member and that the Tenants must vacate the rental unit by August 31, 2017. A copy of the Notice to End Tenancy was submitted in evidence.

The Landlord and the Tenants agree that the Tenants vacated the rental unit on August 31, 2017.

The Agent for the Landlord stated that the reason the Landlord ended the tenancy is that the Landlord intended to use it for an on-site caretaker. She stated that she made a mistake on the Notice to End Tenancy when she declared that the tenancy was ending because the unit would be occupied by the Landlord or a close family member. She stated that she did not realize her error until she spoke with the Agent for the Tenant sometime in mid-August of 2017.

The Agent for the Landlord stated that the caretaker began working on September 01, 2017 and they expect the caretaker will move into the unit at the end of September of 2017, once some renovations have been completed.

The Agent for the Tenant argued that even if the Landlord completed the Notice to End Tenancy in error, the fact remains the Landlord did not, and does not intend to, use the rental unit for the Landlord or a close family member.

### Analysis

On the basis of the undisputed evidence, I find that the Tenants were paying monthly rent of \$1,000.00 at the end of this tenancy.

On the basis of the undisputed evidence, I find that the Tenants were served with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Residential Tenancy Act (Act)*, which required them to vacate the rental unit by August 31, 2017. On the basis of the undisputed evidence, I find that the Notice to End Tenancy declared that the Landlord or a close family member of the Landlord intended, in good faith, to occupy the rental unit.

On the basis of the undisputed evidence, I find that the Landlord never intended to end this tenancy for the purposes of it being occupied by the Landlord or a close family member of the Landlord. Rather, the Landlord ended the tenancy because they wanted to provide it to an on-site caretaker. On the basis of the undisputed evidence, I find that the Landlord still intends to provide the unit to an on-site caretaker.

Section 51(2)(a) of the *Act* stipulates that if steps were not 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 the rental unit was 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 must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

As I have found that the Landlord is not, and has no intentions of, using the rental unit for the reason for ending the tenancy that was stated on the Two Month Notice to End Tenancy, I find that the Landlord is subject to the penalty imposed by section 51(2)(a) of the *Act*. As the rent at the end of the tenancy was \$1,000.00, I find that the Landlord must pay the Tenant \$2,000.00.

In adjudicating this matter I have placed no weight on the Landlord's submission that

the Two Month Notice to End Tenancy was completed in error. The *Act* clearly specifies that the unit must be used for the stated purpose for ending the tenancy. It does not declare that the unit must be used for the intended purpose, in which case I may have been able to consider whether the Landlord truly intended to use it for a caretaker and that the information on the Notice to End Tenancy was simply inaccurate.

I find that the Tenants' application has merit and that they are entitled to recover the cost of filing this Application for Dispute Resolution from the Landlord.

### Conclusion

The Tenants have established a monetary claim of \$2,100.00, which is comprised of \$2,000.00 in compensation pursuant to section 51(2)(a) of the *Act* and \$100.00 in compensation for the cost of filing this Application.

Based on these determinations I grant the Tenants a monetary Order in the amount of \$2,100.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of the 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 *Act*.

Dated: September 20, 2017

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Residential Tenancy Branch