



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, OLC, RP, RR, FFT  
OPB, FFL

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenants and by the landlord. The tenants have filed an amended application seeking an order cancelling a notice to end the tenancy for landlord's use of property; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; an order that the landlord make repairs to the rental unit or property; an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of the application.

The landlord has applied for an Order of Possession for breach of a mutual agreement, and to recover the filing fee from the tenants.

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

At the commencement of the hearing, the parties agreed that the tenants have vacated the rental unit and the landlord has possession. Therefore, the landlord's application is dismissed. Similarly, the tenants' application for an order cancelling a notice to end the tenancy for landlord's use of property is also dismissed. Since the tenancy has ended, I also dismiss the tenants' applications for an order that the landlord comply with the *Act*, regulation or tenancy agreement and for an order that the landlord make repairs to the rental unit or property.

No issues with respect to service or delivery of evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

At the commencement of the hearing the tenants advised that a Monetary Order Worksheet provided for this hearing sets out compensation sought from the landlord.

The landlord agreed that he has been put on notice that the tenant's application seeks monetary compensation.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?
- Have the tenants established a monetary claim as against the landlord for compensation due to the landlord ending the tenancy for landlord's use of property?

### Background and Evidence

**The first tenant** (ZW) testified that this fixed-term tenancy began on October 1, 2020. The tenancy agreement, a copy of which has been provided for this hearing states that the tenancy begins on October 1, 2020 and expires on August 31, 2020, and at the end of the fixed term the tenants must vacate the rental unit for "Owner Occupancy." The tenancy agreement was amended on November 18, 2020 extending the fixed term to August 31, 2021 and increases the cost of storage from \$950.00 per month to \$990.00 per month, and allows 2 pets.

Rent in the amount of \$2,650.00 was originally payable on the 1<sup>st</sup> day of each month, however when the tenants got a 2<sup>nd</sup> dog, the landlord said it was okay as long as the tenants paid an additional \$50.00 per month, bringing the monthly rent to \$2,700.00. The tenants vacated the rental unit on the last day of July, 2021 and the tenants did not pay the last months' rent.

The tenant further testified that on September 14, 2020 the landlord collected a security deposit from the tenants in the amount of \$1,325.00 and a pet damage deposit in the amount of \$1,325.00, both of which are still held in trust by the landlord. The tenants have not provided the landlord with a forwarding address in writing. The rental unit is a suite in a house that has 2 rental units, the other of which was also rented; the landlord did not reside on the property.

The tenant testified that the monetary compensation sought is a cut and dry scenario. The landlord promised to fix the fence, remove mold from the bedroom floor, and when the tenants moved in, many things needed attention, such as painting and garbage

removal, and the rental unit was not cleaned. The tenants made an offer to the landlord to complete those issues for a reduction in rent, and they did.

At Christmas time in 2020 the tenants noticed water leaking into the main bedroom, and sewer backup in the back yard, which is where the tenant suspected the water was coming from. The tenant asked the landlord to attend because baseboards were falling off in the 3<sup>rd</sup> bedroom, and there was mold in the bedroom. The landlord said that he could not get anyone to attend due to COVID. The tenant told the landlord about it several times and sent photographs, but the landlord did nothing. The tenant found a mold specialist, then the landlord called that person, and the parties waited for the tests to come back. The report indicated that the mold was not toxic. The tenant then asked the landlord to put the room back together because the landlord had taken the baseboards off and put in fans. The tenants wanted new baseboards due to their condition. The tenants had to stay in the living room for 1 ½ months.

The major thing creating problems was the back yard and fencing. When the tenants first looked at the place, the fence was in a particular position and the tenants said they wanted to keep it there, but before moving in, the landlord had taken it down and said he would put it back up, but never did. The fence was left on the ground so the tenant did his best to tuck it away due to hazards such as nails sticking out, and just piles of bricks and sticks. The tenant messaged the landlord about it many times. Another area of the fence was rotting, which the tenant told the landlord about and sent the landlord photographs. The fence fell over. The previous tenant told the tenant that there were problems with the fence and had the same issues with the landlord when that person resided in the rental unit.

The tenant contacted the Residential Tenancy Branch who advised the tenant to send a letter to the landlord about repairs, and the tenant did so. Then the landlord gave the tenants a Caution Notice, a copy of which has been provided for this hearing. It is dated May 13, 2021. The tenant took it to mean that the landlord was cautioning the tenant about sending emails and text messages. The tenant filled in a maintenance request form and sent it to the landlord and nothing happened.

The landlord gave the tenants a letter about moving out, and a copy has been provided for this hearing. It is not dated and does not contain an effective date. The tenants had to find a new place, had to deal with a new school, the dogs and the tenants' business in the garage that the landlord knew about, and a new security deposit, and change in work scenarios. The landlord gave nothing for moving expenses, and the tenants could not risk having their belongings in the street.

The tenants found advertisements on Craigslist, copies of which have been provided for this hearing, as well as a sign on the front yard advertising the rental unit for rent; the landlord had no intention of moving in. The first advertisement states that the rent is \$2,850.00 per month and is available now. Another states that the landlord is looking for professionals for long-term stay. The photographs of a "For Rent" sign are dated September 4, 2021.

The tenants' Monetary Order Worksheet claims \$6,000.00, being 12 months of rent reduction for incomplete repairs. Another Monetary Order Worksheet claims \$31,800.00, being 12 months rent at \$2,650.00 per month for the landlord's failure to use the rental unit for the purpose stated in the landlord's letter requiring the tenants to vacate the rental unit.

**The second tenant** (MH) testified that the leak was in late December and started entering the rental unit. The landlord took off baseboards in the bedroom, and the tenants had to move into the living room for 1 ½ months. The landlord left it in shambles, which was frustrating for the family. The tenants' child is 6 years old. It was stressful to have the fence broken; the rental unit is next to a highway and animals and kids used the outside space. There was communication with the landlord to fix the fence.

The storage space specified in the tenancy agreements was a garage where the other tenant had a shirt printing business.

**The landlord** testified that initially, with guidance of BC Health due to the pandemic, landlords were given instructions that in accordance with BC Housing, it was best to not do non-essential repairs and stay within core bubbles. The landlord is an essential worker, a pilot for Air Canada and is not allowed to wear masks in the cockpit. When the landlord returns back to Canada from long trips, the landlord is exempt from quarantine because he is an essential worker and is not to interact a lot with others who could be carriers, and being socially responsible, that was the right decision - to not enter and defer non-essential repairs. The landlord does most repairs himself and can't afford to send repair people. The landlord didn't see it as an inconvenience; the rental unit was inspected. Two baseboards were removed and put against the wall and there was no mold, and the rental unit was safe to live in. The landlord addressed all repairs and sent the tenants a letter saying it would be addressed with the BC reopening plan.

The water back-up was caused by a storm drain in the center of driveway which is a collecting area for water and it sits there and evaporates over time. It is not connected to the sewer. The water rose about an inch a day for 2 days. No water was going toward the

house. The storm sewer is sloped toward the drain, which is why the landlord removed the baseboards.

The tenant in the upper level of the home went on vacation and turned down the thermostat so the furnace was not heating at regular room temperature, but at 15 degrees and water ran down the inside walls and the landlord sent a letter to the tenants. The thermostat was turned up and heat in house continued to function. The landlord went to deliver fans on December 31, 2020 but the tenants wouldn't allow the landlord in. The next day, the inspector arrived and provided a report. He also sent an email to the tenants to show that no mold was found, and there was no risk.

When the tenants first viewed home, the previous tenant had taken 2 sections of the fence and installed them without permission to extend her area which was a private yard and knew that she had no authority to do that. On the last day of that tenancy, she moved them and installed a shorter fence to its original space to enclose the back yard. When the tenants saw it, they saw the larger area. During move-in they saw the fence and queried that and asked if they could move it back, and the landlord said yes, but at their expense and to write the landlord a letter about it. The tenant said he would cover the cost and would do it on his own because he used to be a carpenter, but he never did it. The fence panel they claimed blew over in the wind. The landlord inspected that panel and has provided a statement from a witness dated June 17, 2021 who helped the landlord move the fence and clean it up. The other fence panel is about 10 feet from the back of the garage, so for wind to blow it over, that would equate more to a dog standing and putting weight on it. The landlord believes the tenants' dogs knocked it over.

The landlord further testified that rent is \$2,650.00 and storage fees to rent the garage is \$990.00. There were also multiple tenancy breaches and the tenants were sent letters about it.

With respect to the Caution Notice sent to the tenants on March 7, 2021 the landlord became tired of being verbally abused on the phone, disturbing the landlord's peace. The tenants sent multiple emails and text messages and then would follow up with phone calls.

The tenant showed up at the landlord's house on September 4 and was hostile and aggressive again and the landlord filed a police report. The tenant was trespassing on the landlord's property yelling, screaming saying he was evicted. It was very uncomfortable and he wouldn't leave and didn't until about 15 minutes later.

The landlord occupied the rental home at the beginning of September, 2021 and referred to Residential Tenancy Policy Guideline 30 stating that an owner can rent vacation

property and the landlord can occupy the property for no specific amount of time after the tenancy ends. The landlord stayed there on and off. It's a nice break from the City. The Policy Guideline states, in part:

“Requirement to Vacate: A vacate clause is a clause that a landlord can include in a fixed term tenancy agreement requiring a tenant to vacate the rental unit at the end of the fixed term in the following circumstances:

- the landlord is an individual, and that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.
- the tenancy agreement is a sublease agreement

“For example, an owner can rent out their vacation property under a fixed term tenancy with a vacate clause if they or their close family member intend in good faith to occupy the property at the end of the fixed term. There is no minimum amount of time that a landlord or close family member must occupy the rental unit. Occupancy can be part time, e.g., weekends only.

“The reason for including a vacate clause must be indicated on the tenancy agreement and both parties must have their initials next to this term for it to be enforceable. The tenant must move out on the date the tenancy ends. The landlord does not need to give a notice to end tenancy or pay compensation as required when ending a tenancy under section 49. See Policy Guideline 50: Compensation for Ending a Tenancy for more information If the tenancy agreement does not require the tenant to vacate the rental unit at the end of the term, and if the parties do not enter into a new tenancy agreement, the tenancy continues as a month-to-month tenancy.”

The landlord did not give a notice to end the tenancy, except for unpaid rent. The tenancy agreement was to end pursuant to Sec 44(1)(b) but the landlord made an error in the tenancy agreement ending the tenancy in 2020, when it should have read 2021. The amended tenancy agreement was signed in November, 2020. That adjusted the date.

The tenants vacated without paying rent for August. The tenants in the upper level of the rental home told the landlord that the tenants had moved out and left the doors unlocked. At the end of August, the landlord found that the tenants had abandoned some items.

The landlord submits that Section 49 is irrelevant. Further, the tenants abandoned and did not provide a forwarding address.

## Analysis

I have reviewed the tenancy agreement, and it states that at the end of the fixed term the tenants must vacate the rental unit on August 31, 2020 for "Owner Occupancy," which was amended to end the tenancy effective August 31, 2021, and states that the amendment forms part of the tenancy agreement.

The landlord has referred to Section 44 (1)(b) of the *Act* which states that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that, in the circumstances prescribed under Section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term. Section 97 (2) (a.1) gives the Lieutenant Governor in Council to make regulations including: prescribing the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term. The regulations state:

### **Fixed term tenancy — circumstances when tenant must vacate at end of term**

**13.1** (1) In this section, "**close family member**" has the same meaning as in section 49 (1) of the *Act*.

(2) For the purposes of section 97 (2) (a.1) of the *Act*, the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term are that

- (a) the landlord is an individual, and
- (b) that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

I agree with the landlord that no time limit for the landlord to stay in the rental unit is set out in the Policy Guideline #30. However, the regulations require the landlord to occupy; the landlord may not play the "vacation" card and then advertise the rental unit after the tenancy ends for a higher rental amount, and include in the advertisement that the landlord seeks a long-term tenant. I find that to be underhanded and an abuse of process. The tenancy agreement provided for rent in the amount of \$2,650.00 and the landlord advertised for a new tenancy at \$2,850.00 per month.

If the landlord had complied with the law, the tenants would be entitled to compensation equivalent to 1 months' rent payable. However, since the landlord did not serve a Two Month Notice to End Tenancy for Landlord's Use of Property, the tenants are not entitled to 12 months' rent from the landlord. I do find that since the landlord has not

complied with the law, and the tenants vacated due to the landlord's letter, which has no effective date of vacancy, the tenants went through significant stress to prevent the landlord from obtaining an Order of Possession and the tenants having no place to go. I find that the tenants are entitled to the difference in rent that they paid and the advertised amount of rent (\$2,850.00 - \$2,650.00 = \$200.00) for 12 months, or \$2,400.00, in addition to 1 months' rent payable, for a total of \$5,050.00, inclusive of all monetary claims.

Since the tenants have been partially successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

The tenants' applications for orders cancelling a notice to end the tenancy for landlord's use of property, and for an order that the landlord comply with the *Act*, regulation or tenancy agreement, and for an order that the landlord make repairs to the rental unit or property are dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$5,150.00**.

This order is final and binding and may be enforced.

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: October 07, 2021

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Residential Tenancy Branch