



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BEST PROPERTIES LIMITED  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, RR

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for landlord's use of property and for an order reducing rent for repairs, services or facilities agreed upon but not provided.

One of the tenants attended the hearing and represented the other tenant. An agent for the landlord company also attended and identified himself as the owner and director of the landlord company. The parties each gave affirmed testimony and were given the opportunity to question each other.

The landlord has not provided any evidentiary material, and the landlord's agent agrees that the tenants' evidence has been received, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

**The landlord's agent** (hereafter called the landlord) testified that he is not certain when the tenants moved into the rental unit because they sub-let from another tenant without

the landlord's consent. However, a tenancy agreement was prepared for a fixed term to last for 1 year and then revert to a month-to-month tenancy. The landlord is not currently in Canada and has no paperwork with him.

Rent in the amount of \$6,000.00 per month is payable on the 1<sup>st</sup> day of each month, including all utilities, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$3,000.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family home. No one has provided a copy of the tenancy agreement.

The landlord further testified that on July 27, 2021 the tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice). It was served by an agent of the landlord in person to the tenant who did not attend the hearing. A copy of 2 pages of the 4-page form of Notice has been provided by the tenants for this hearing. It is dated July 26, 2021 and contains an effective date of vacancy of September 30, 2021. The reason for issuing it states: "The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit." The landlord testified that he intends to move in, and has 2 kids age 21 and 19. The rental home has 3 bedrooms upstairs and 2 bedrooms downstairs with a 2<sup>nd</sup> kitchen.

There was a flood in the basement due to burst pipes on June 10, 2021. The landlord informed the insurance company and a restoration company arrived to do repairs. The landlord also contacted the tenants and explained that they had to move out until the work was done and would not have to pay rent, but the tenants refused.

The landlord also talked to the insurance company later, who agreed that the basement is 35% of the house and said it would be reasonable to have the tenants refrain from using the basement and reduce rent by that amount. Repairs have not yet been completed, and is in the hands of the restoration company and the insurance company. The landlord would be agreeable to a 35% rent reduction until repairs are completed.

**The tenant** testified that the tenants never received a tenancy agreement. The home was rented at \$6,000.00 per month including all utilities. The tenants moved into the home in 2018 with their 2 children.

On June 9, 2021 a minor pipe burst in the bathroom and a plumber came and fixed it and said that he had to get some ties because it's an old house and would take 48 hours for all the work to be completed and would be fine. The plumber left, and another company's personnel arrived. The only place that flooded was part of the wall of the

kitchen and bathroom adjacent to the kitchen, on the lower floor. It also happened prior last year and they did the same thing; removed toilets, and it took 4 days to accomplish everything. On the 14<sup>th</sup> of June another company arrived for no reason and started tearing down everything, including floors where there was no flooding, and cabinets which they said they'd put back, but were left for 4 months. When they took the sink out, the warm and cold pipes had to be sealed, but they only sealed 1 and the other continued to flood more. Then they brought in dryers. The tenant took some video footage and showed the landlord that on the left side were dryers and the right side was flooding. For 4 days no one arrived. The tenant went to Home Depot and fixed it himself. The personnel who attended flooded the basement more than the original problem.

The landlord told the tenant that it was better to be fully fixed, but the tenant has a family living there. The landlord wanted to fix the whole place and the tenant told the landlord that the bathroom was the only problem. They rendered it uninhabitable. Nothing has been fixed and it's been 5 months. Further, the washer was out of service for 3 months, and the landlord doesn't care. Two years ago the roof leaked and it took the landlord 6 months to have it repaired. The tenants moved out for 2 months in July and August and paid rent in full. If the landlord intends to move in, he'll have to fix it, but he won't move in. The tenants received 2 pages of the notice to end the tenancy.

The landlord has told the tenant how many houses he owns; is very rich and powerful and took advantage of the problem to force the tenants out and get insurance. The landlord also told the tenant that he wanted to list the house for sale, then said that rent was too low and could be \$8,000.00 or \$9,000.00 and the tenants would have to move out before winter. The landlord has avoided his responsibility under Section 32 of the Residential tenancy Act, and there is no evidence from the landlord to support his testimony. No one told the tenants that 35% would be returned to the tenants.

### Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. In the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in the Notice.

I accept the undisputed testimony of the tenant that the landlord has other homes, and the landlord gave no indication of why he wants to move into this rental unit as opposed

to other properties that the landlord owns. I am not satisfied that the landlord has demonstrated good faith intent.

The *Act* also requires that any notice to end a tenancy given by a landlord must be in the approved form. The tenant has provided only 2 pages of the 4-page approved form and testified that only the 2 pages were served. The landlord has not provided any evidence, and I am not satisfied that the Notice given was in the approved form. Therefore I cancel it and the tenancy continues.

The landlord testified that he would be content with reducing rent by 35% for loss of use of the lower level of the rental home, however the tenant testified that no such offer was made. In the circumstances, I accept that 35% is a fair amount, and I so order until all repairs have been completed.

The flooding incident occurred on or about June 10, 2021 and 35% of 20 days remaining in that month amounts to \$1,400.00 ( $\$6,000.00 \times 35\% / 30 \text{ days} \times 20 \text{ days} = \$1,400.00$ ). In addition, 35% of \$6,000.00 for July through November, 2021 is \$2,100.00 per month, and for 5 months totals \$10,500.00. I find that the landlord has agreed to 35% and the landlord must reimburse the tenants the sum of \$11,900.00.

I further order that rent be reduced by \$2,100.00 per month, and the tenants be permitted to pay \$3,900.00 per month until all repairs have been completed, and the landlord must continue to pay all utilities.

The *Residential Tenancy Act* states that:

**62** (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

In this case, I accept the undisputed testimony of the tenant that the tenants paid full rent for 2 months last year even though the tenants were not able to reside in the rental unit, and I find that the tenants are entitled to recover 2 months' rent, or \$12,000.00.

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

I 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 \$24,000.00 and I order that the tenants be permitted to reduce rent until that sum is realized, or may otherwise

recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

### Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated June 26, 2021 is hereby cancelled and the tenancy continues.

I further order that rent be reduced to \$3,900.00 per month until all repairs are completed and the landlord must continue to pay all utilities.

I further 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 \$24,000.00 and I order that the tenants be permitted to reduce rent further until that sum is realized or may otherwise recover it.

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: November 23, 2021

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Residential Tenancy Branch