



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

This hearing was convened by way of conference call on February 25, 2022, having been adjourned from January 28, 2022, concerning an application made by the tenants seeking a monetary order for compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property, and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing, and the landlord was represented by his son as agent. The tenants and the landlord's agent each gave affirmed testimony, and the tenants called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

The parties agree that evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for the landlord's failure to accomplish the reason for ending the tenancy as set out in a Two Month Notice to End Tenancy for Landlord's Use of Property within a reasonable time?

### Background and Evidence

#### TENANT'S TESTIMONY:

**The first tenant** (LAL) testified that this month-to-month tenancy began on May 9, 2006. Rent in the amount of \$1,695.00 was originally payable on the 1<sup>st</sup> day of each month,

which was increased over time to \$2,200.00 per 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 either \$500.00 or \$600.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family home. The tenants have not provided the landlord with a forwarding address in writing.

The landlord had been kicked out of his home and stayed with the tenants for about 4 months during the tenancy, and helped out with the rent.

The tenant further testified that the landlord served a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) however no one has provided a copy of it for this hearing. The tenants disputed it. A copy of the resulting Decision dated August 16, 2021 has been provided for this hearing by the landlord, which upholds the Notice and the landlord was provided with an Order of Possession. The Decision states that the Notice was served on March 31, 2021 and contained an expected date of vacancy of June 1, 2021, and that the reason for issuing the Notice specified that the rental unit would be occupied by the landlord's child.

The tenant further testified that at the hearing the landlord's son said that he and his wife were couch-surfing or sleeping in their car and had nowhere else to go, so wanted to move into the rental unit immediately.

The tenants vacated the rental unit on or about September 1, 2021, however no one moved into the rental home until about 6 weeks later. In November, 2021 there were no cars in the driveway, no tire tracks or bare spots in the snow in the drive-way.

**The second tenant** (GBL) testified that the tenants wanted to buy the house and had an inspector who advised to not purchase it because of faulty wiring and plumbing. The landlord kept saying it was "the tenant's house."

The tenants moved out on August 31, 2021.

The tenants' witness also lived with the tenants in the rental unit for a few years off and on. After the tenants moved out, the witness would go there at least 3 times per week for mail and told the tenants that she never saw anyone and that no one was living there, and the witness couldn't understand why the tenants had to vacate.

During the tenancy the tenants helped the landlord who felt lost after he was kicked out of his home by his wife and son and a restraining order was made against the landlord disallowing the landlord to see his children. The tenants helped him get a lawyer.

The tenant is not aware of who may have moved into the rental home.

**The tenant's witness** testified that she lived with the tenants in the rental home off and on for about 5 years, and they were like a family. The landlord told the tenants and the witness that he was really sad due to the treatment by his wife and son. The tenants were not treated fairly.

The landlord's son did not move into the rental unit during the first week of September, 2021, and does not know when someone moved in. The witness was waiting for a pension mail that would be sent to the rental unit, so the witness went there about twice per week. The witness always knocked on the door but nobody answered. There was no one there from July to November, 2021 and there were no cars in the driveway. The witness also testified that on October 15, 2021 the witness spoke to someone there, but doesn't know who.

#### LANDLORD'S TESTIMONY:

**The landlord's agent** is the landlord's son who testified that there was a sense of urgency for the landlord to obtain possession for the landlord's son to move in, but the Notice was issued in March and the landlord wanted to give the tenants time to find a suitable place. The landlord's agent denies stating in the previous hearing that he was sleeping in his car, but stayed with a couple of friends. However, that situation wasn't suitable.

The Decision dated August 16, 2021 provided the landlord with an Order of Possession effective on 2 days notice to the tenants, and it was served to the tenants on August 18, 2021. However, the tenants didn't vacate until September 5, not on the 1<sup>st</sup> of September as the tenant had testified. The same Decision states that the tenant had testified that rent was paid for June and July and owed \$2,200.00 rent for August, but the Arbitrator didn't rule on that. The unpaid rent for August was the compensation required by law, however the tenants didn't pay the rent for overholding. A video taken on September 5, 2021 has been provided for this hearing showing the condition of the property the day the tenants vacated.

The landlord's agent also testified that he started removing junk, and has provided receipts for pounds of garbage that had to be removed from the rental unit, including furniture. The landlord's agent worked 8 to 12 hours at a regular job, and it was difficult to get to the rental unit to clean up after the condition the rental unit was left in. The landlord's agent

only had weekends. The cost quotes were about \$1,000.00 so the landlord's agent decided to do it himself.

On the September 12, 2021 weekend the landlord's son had a pre-planned trip to Whistler, then started painting. Receipts for painting have been provided for this hearing, and the landlord's agent testified there were thousands of pins and it took a long time, as well as a lot of cleaning to do. Photographs have been provided for this hearing.

The landlord's agent moved into the rental unit on October 11, 2021, and testified that was the soonest date it was ready to occupy, and has provided a U-Haul Rental Order containing that date as evidence; it was always the intention for the landlord's agent and son to reside in the rental unit. The landlord's agent had the vehicle insurance and drivers' licence address changed on October 13 and end of October, respectively. Also provided for this hearing is a hydro bill in the name of the landlord's agent, and other receipts.

The landlord's agent still lives in the rental unit with a spouse.

### Analysis

The *Residential Tenancy Act* requires a landlord to accomplish the stated purpose in a Two Month Notice to End Tenancy for Landlord's Use of Property commencing within a reasonable time after the effective date of the Notice. In this case, the Notice was effective on June 1, 2021, however the tenants didn't move out until much later, due to circumstances regarding disputing the Notice.

I have reviewed all of the evidence and I am satisfied that the landlord's agent is the landlord's son and moved into the rental unit on October 11, 2021. The parties disagree as to what date the tenants actually vacated the rental unit, but whether it was on August 31 or September 1 or 5, 2021, I don't think that discrepancy is particularly an important factor.

The tenants' position is that at the hearing in August, 2021 the landlord's agent made it sound urgent, and moving in that many weeks after the tenants vacated is not reasonable. However, I don't think it's unreasonable to paint before moving in. Considering the photographs provided by the landlord, I am satisfied that a fair amount other of work was also done by the landlord's agent prior to moving in.

In the circumstances, I am not satisfied that the landlord has failed to accomplish the stated purpose in the Two Month Notice to End Tenancy for Landlord's Use of Property within a reasonable time, and I dismiss the tenants' application.

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 is hereby dismissed in its entirety without leave to reapply.

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: March 04, 2022

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Residential Tenancy Branch