



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDCT, FFT

### Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenants seeking an order cancelling a notice to end the tenancy for cause; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The landlord and both tenants attended the hearing, and one of the tenants was accompanied by a support person. The landlord and one of the tenants gave affirmed testimony, and the parties were given the opportunity to question each other.

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

At the commencement of the hearing, the parties advised that the tenants vacated the rental unit on September 30, 2022 and therefore, I dismiss the tenants' application for an order cancelling a notice to end the tenancy for cause.

### Issue(s) to be Decided

The issue remaining to be decided is:

- have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for moving expenses?

## Background and Evidence

**The tenant** (HSAM) testified that this month-to-month tenancy began on March 1, 2021 and the tenants vacated the rental unit on September 30, 2022. Rent in the amount of \$1,400.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. On February 19, 2021 the landlord collected a security deposit from the tenants in the amount of \$700.00 which was returned to the tenants in full. The rental unit is a basement suite, and the landlord's family resided in the upper level of the home during the tenancy. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that on August 31, 2022 the landlord personally served the tenant with a One Month Notice to End Tenancy for Cause, and a copy has been provided for this hearing. It is dated August 31, 2022 and contains an effective date of vacancy of September 30, 2022. The reason for issuing it states: "Rental unit must be vacated to comply with a government order." The Details of Cause(s) section states: "Due to the conditions outlined by the Parole Board of Canada we cannot have someone residing in our unit who is under the age of 16."

The tenant was due to have her first baby on September 15, 2022, and the baby was born on September 20, 2022. The tenants were not expecting to have to move and hoped to stay until they could adjust to being parents. The landlord's evidence indicates that a person who was in federal prison was released in June, 2022, and the tenants would not have had such a difficult time, but suffered stress from receiving a notice to end the tenancy on August 31, 2022, just prior to the tenant's due-date, and had to borrow money from another person to pay a security deposit for a new rental unit. If the tenants had known earlier, they would not have occurred such expenses because they wouldn't have had to go back and forth so much. The tenants took the first place they found available in a rush. The tenants didn't receive any information about a government order until September 27, 2022, after the tenants vacated, so had no clue who was in prison, or when the release date was. The landlord didn't want to disclose the information, but the tenant believes it was important for the tenants to know.

The landlord indicated that a Community Assessment could be completed, gathering the tenants and a person from the Parole Board to make an assessment, but the tenant believed they would still have to move out because the tenant had a baby, and the tenants didn't believe there was any point in asking for an extension. The landlord asked the tenants to ask their parents if they could live there, but that was not an option for the tenants.

**The landlord** testified that a family member had been released from prison and was residing with the landlord. A copy of the release documentation from the Parole Board has been provided for this hearing. One condition of release was not to have any contact with anyone under the age of 16. When the landlord found out that the tenant was pregnant, the landlord and the family member would have to go through the Parole Supervisor, and the tenants would have to move, or the prisoner would have to stay at the half-way house. The release date was June 16, 2022 but the landlord didn't expect they were having a baby. The landlord told the Parole Board there was no one under the age of 16 living at the landlord's home.

When the landlord gave the One Month Notice to End Tenancy for Cause, the tenant (HSAM) was going back and forth having trouble finding a place to move to. The Community Assessment, as explained by the Parole Officer, indicated that the other tenant and boyfriend could stay, or all of them could comply with the assessment, along with the person convicted of an offence, to provide details of conviction to the tenants, and would require identification and a criminal background check. Also the tenant who was having a baby would have to inform the Ministry of Child Development, and if all was well, the landlord could retract the notice to end the tenancy. However, on September 11, 2022 the tenant said she didn't want to go further with the Community Assessment, stating that the tenant didn't feel comfortable living there. The landlord thought it would end there, but the tenants asked for free rent for September, and wanted the landlord to compensate the tenants for that. The landlord's family has suffered financial distress as well.

The rental unit was re-rented effective October 1, 2022.

### Analysis

Firstly, if the tenants had not vacated the rental unit, I would have cancelled the One Month Notice to End Tenancy for Cause. The landlord entered into a contract with the tenants on February 19, 2021 for a month-to-month tenancy and was bound by that contract. The release order does not contain any order that the landlord must issue a notice to end the tenancy, and it is dated June 15, 2022, well after the contract (tenancy agreement) was signed by the parties. Therefore, the landlord was not in a position to accept the family member who was bound by the condition to have no contact with persons under the age of 16. I accept that the landlord wished to help the family member, which to the landlord was more important than keeping the tenants in the rental unit, but it is not permissible by law.

Where a party makes a monetary claim for damage or loss as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, I am satisfied that the tenants suffered a loss of moving expenses and stress, considering the birth of the baby. I also find that the expenses were a result of the landlord giving a notice to end the tenancy without a legal right to do so. Moving expenses are generally determined to be the equivalent of 1 month's rent payable under the tenancy agreement, which is the amount claimed by the tenants.

I also find that the only way the tenants could have mitigated any loss suffered would have been to stay in the rental unit until this hearing. However, the tenants vacated believing that they would have to in any event.

I have reviewed all of the evidentiary material provided by the parties, and I find that there was no requirement for the tenants to cooperate or be involved in a Community Assessment. I also find that the tenants suffered stress due to receiving the One Month Notice to End Tenancy for Cause while one of the tenants was due to have a baby on September 15, 2022, and gave birth on September 22, 2022, which was only 8 days before the effective date of vacancy.

Since the landlord had no legal right to end the tenancy, and in the circumstances, I find that the tenants are entitled to moving expenses equivalent to 1 month's rent payable under the tenancy agreement, or \$1,400.00.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee from the landlord. I grant a monetary order in favour of the tenants in the amount of \$1,500.00. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division as a judgment.

### Conclusion

For the reasons set out above, the tenants' application for an order cancelling a notice to end the tenancy for cause is hereby 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 \$1,500.00.

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: January 22, 2023

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Residential Tenancy Branch