



# 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 concerning an application made by the tenant seeking monetary compensation for the landlord's failure to use the rental unit for the purpose contained in 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.

The tenant and the landlord 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 tenant advised that the landlord was provided with the tenant's evidence by email and has received a substitutional service order allowing service by email, but the tenant has not received the landlord's evidence. The landlord advised that the evidence was also provided to the tenant by email on December 13, 2022 but did not have a "read receipt" or any response from the tenant to confirm that it was received. With the tenant's consent, I permitted the landlord to re-serve the evidence by email during the hearing. Consequently, during the course of the hearing I permitted the tenant to upload some evidence to the Residential Tenancy Branch service portal and to the landlord during the hearing. I have reviewed all of the evidence, 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 given and in good faith?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on February 15, 2022, expiring on January 31, 2023. Rent in the amount of \$1,700.00 was payable on the 1<sup>st</sup> day of each month 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 \$500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. No move-in or move-out condition inspection reports were completed by the parties. The rental unit is an apartment, and the landlord did not reside in the building during this tenancy. A copy of the tenancy agreement has been provided by the tenant for this hearing, which the landlord agrees is a true copy.

The landlord further testified that the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property by email but does not recall the date. A copy has been provided by the tenant for this hearing and it is dated June 22, 2022 and contains an effective date of vacancy of August 17, 2022. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the landlord or the landlord's spouse. The landlord testified that the landlord and the landlord's spouse moved into the rental unit on August 1, 2022. They were expecting a baby and their other place is in a location that does not have a hospital which is why the landlord needed the rental unit.

The landlord has not attempted to re-rent but still resides in the rental unit and has provided a letter from another tenant in the building attesting to that, but it doesn't say when the landlord moved in. On June 20 the tenant said she would be moving out on July 1, 2022 and the landlord's plan was to move in on August 1, and it would be empty for a month. The landlord thought about re-renting for 1 month since the tenant told the landlord that she would be moving out a month earlier, but did not re-rent it; the rental unit sat empty and the landlord did not advertise.

The tenant vacated the rental unit at the end of July, 2022 but did not give written notice to end the tenancy earlier than the Notice given to the tenant. The landlord also offered to pay compensation of 1 months rent to the tenant as well as return of the security deposit but the tenant wanted more money.

The tenant has not provided the landlord with a forwarding address in writing.

**The tenant** testified that the landlord collected the last month's rent and the security deposit at the beginning of the tenancy.

The tenant further testified that she lived in the rental unit for 4 months before the landlord said he needed to move back in, but the parties had a 1 year lease, so he could not legally serve a Two Month Notice to End Tenancy for Landlord's Use of Property, but the tenant accepted it. The landlord gave the tenant the option to leave in August or if the tenant left in July the tenant would get 1 month of rent for free. The tenant moved out by July 19 and spoke to the landlord who looked at the rental unit and said it was fine. On July 8 the tenant notified the landlord by email that the tenant found a place and wanted to move out on the 18<sup>th</sup> of July. The landlord responded and the parties decided to meet to hand over the keys. The landlord also sent text messages and emails to the tenant wherein he said he would be re-renting for the following month. In another text the landlord said the reason for eviction was because the tenant was a problem tenant, not because the landlord was moving back in.

The landlord advertised the rental unit for a short-term rental on Facebook Marketplace on January 12, 2023 and the tenant has provided copies.

The tenant has not provided the landlord with the tenant's forwarding address but an email address for return of the security deposit.

### Analysis

Firstly, a landlord may not collect the last month's rent at the beginning of the tenancy. Further, neither a landlord nor a tenant may end a tenancy prior to the end of a fixed term unless the parties otherwise agree in writing, or rent is unpaid or the landlord has cause to evict, and in both cases must use the approved form to end the tenancy. In this case, the landlord ended the tenancy prior to the end of the fixed term contrary to the law, and the tenant accepted that.

The *Residential Tenancy Act* states that a landlord must compensate a tenant the equivalent of 1 month's rent after ending a tenancy for the landlord's use of the property, which is usually accomplished by collecting no rent for the final month. In this case, the landlord collected rent for the final month of the tenancy at the beginning of the tenancy. The parties also agree that the tenant paid rent for July, 2022, which I find was the final month of the tenancy considering the landlord's testimony that the landlord moved into the rental unit on August 1, 2022. Therefore, I find that the landlord owes the tenant **\$1,700.00** for paying the last month of rent twice.

The law also states that once a tenant receives a Two Month Notice to End Tenancy for Landlord's Use of Property, the tenant may give 10 days written notice to end the

tenancy earlier. In that case, the tenant pays rent to the effective date of the tenant's notice and the landlord is still required to give the tenant 1 month's rent as compensation. In this case, having reviewed all of the evidence, I am not satisfied that the tenant has established that the landlord was given 10 days written notice to vacate. The tenant paid the last month of rent, and the tenant is still entitled to **\$1,700.00** compensation.

Where a tenant seeks compensation for the landlord's failure to use a rental unit for the purpose contained in a notice to end a tenancy for the landlord's use of the property, the onus is on the landlord to establish that the notice was given in good faith with no ulterior motive, and that the landlord has used the property for the purpose contained in the notice. The landlord must accomplish the stated purpose within a reasonable period after the effective date of the landlord's notice and use it for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the landlord's notice. In the event that the landlord fails to comply, the landlord must pay the tenant 12 times the monthly rent, in addition to the 1 month's rent compensation.

In this case, the effective date of vacancy in the landlord's Notice is August 17, 2022, which is changed to the nearest date that complies with the law. Since rent was payable on the 1<sup>st</sup> day of each month and the Notice is dated June 22, 2022, the effective date is the last day of August, 2022.

The tenant has provided evidence of the landlord advertising the rental unit for rent in January, 2023 for \$2,200.00 which is more than the tenant had been paying. The landlord testified that he didn't advertise it and has provided some evidence of still residing in the rental unit, such as the letter from the neighbour.

Having found that the effective date of the landlord's notice is August 31, 2022, the landlord will not be required to pay any compensation unless the landlord moves out prior to the end of this month. There is no evidence that any future rentals will or could take place within the next 2 weeks, and I decline to order that the landlord pay 12 times the monthly rent to the tenant. I find the tenant's application to be premature.

With respect to the security deposit, the law requires a landlord to return a security deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount.

In this case, the landlord testified that the tenant has not provided a forwarding address in writing. However, the landlord received the Notice of Dispute Resolution Proceeding for this hearing which contains an address for service of the tenant. **I find that today, the day of the hearing is deemed to be the date that the landlord received the tenant's forwarding address in writing**, and the landlord must return the security deposit to the tenant or make an application claiming against it within 15 days of today's date. If the landlord fails to do either, the tenant will be at liberty to apply for double the amount.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant as against the landlord in the amount of **\$3,500.00** (\$1,700.00 + \$1,700.00 + \$100.00 = \$3,500.00). The landlord must be served with the order which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as a judgment.

#### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$3,500.00**.

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: February 16, 2023

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Residential Tenancy Branch