



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT  
                              MNDL, FFL

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenants and by the landlords which have been joined to be heard together.

The tenants' application seeks monetary compensation for the landlords' 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 landlords for the cost of the application. The landlords' application seeks a monetary order for damage to the rental unit or property and to recover the filing fee from the tenants.

Both tenants and both landlords attended the hearing, and one of the landlords and both tenants gave affirmed testimony. The landlord also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness.

The parties agree that all evidence has been exchanged, with the exception of video evidence provided by the tenants. Any evidence that a party wishes to rely on must also be provided to the other party. Since the tenants have not provided the landlords with the video evidence, I decline to consider it. All other evidence has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the landlords established that the landlords have complied with the *Residential Tenancy Act* by using the rental unit for the purpose stated in a notice to end the tenancy for landlord's use of property, or that extenuating circumstances prevented that?

- Have the landlords established a monetary claim as against the tenants for damage to the rental unit or property?

### Background and Evidence

**The landlord** (SB) testified that this fixed term tenancy began on May 1, 2014 and was renewed each year for 1 year or 6 months terms. The tenants moved out of the rental unit on June 1, 2022. Copies of several tenancy agreements have been provided as evidence for this hearing. Rent in the amount of \$1,528.02 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 landlords collected a security deposit from the tenants in the amount of ~~\$350.00~~ \$650.00, all of which has been returned to the tenants, and no pet damage deposit was collected. The rental unit is a single family dwelling.

The landlord further testified that a move-in condition inspection report was completed at the beginning of the tenancy, but the move-out condition wasn't completed because it didn't go well and the landlords were asked by the tenants to leave because the tenants didn't like the landlords' reaction to how the house was left.

The landlords had served the tenants with a Two Month Notice to End Tenancy For Landlord's Use of Property, and a copy of the first 2 of the 4-page document have been provided by the tenants for this hearing. It is dated March 25, 2022 and contains an effective date of vacancy of June 1, 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 child of the landlord or landlord's spouse. The tenants did not dispute it and the landlords' daughter moved into the rental unit on October 4, 2022 and pays \$1,000.00 per month for rent.

The landlords had to clean up the house and make it habitable after the tenants moved out. Once the landlords received the keys from the tenants, the landlords attempted to clean, but the biohazard was too much and were told by the biohazard team that it was a hazard to the landlords' health.

The landlords have provided a Monetary Order Worksheet setting out the following claims:

- \$5,760.30 for the biohazard treatment;
- \$320.45 for new carpet;

- \$34.81 for carpet fitting supplies;
- \$4,000.00 for loss of rental revenue;
- \$22.84 for garbage clearance for the gardens;
- \$38.06 and \$36.54 and other amounts also for garbage clearance.

The landlords have also provided a copy of the biohazard treatment report and photographs. The carpet was about 9 years old and was replaced by the landlords, who paid for the carpet and fitting supplies and installed the carpet themselves.

The landlords started repairs on June 1, 2022; the landlords both work, so worked on the rental unit until the end of September.

**The landlords' witness** (MB) testified that the witness had been called out regarding an odor issue in the home. The witness completed an inspection and couldn't say any feces existed, but urine spotting and staining had gone through the sub-floor in all upper rooms and on the concrete downstairs, which was dried out and crystalized urine remained.

The witness recommended a 3-step program; applying bio-wash to both floors with a truck-mounted system and chemicals. Then recommended installing a hydroxyl generator to clean the air. That would stay for 3 days to turn the air after chemicals had been extracted. After the 3 days, the witness would capsulate flooring on the wood structure subfloor, and recommended furnace and duct cleaning. The witness provided the report and invoice totaling \$5,760.30 to the landlord, which they paid. The work probably started in mid-September.

The witness also testified that if there were pet stains that were 10 years old, they would have dried out and would not leave a smell. When the witness went into the rental unit the carpet was lifted and if urine had saturated into the wood it would have been bone dry, but was damp when the witness was there. When the witness was there, there was no carpet and no pad, and areas with staining were saturated. If the carpet had been cleaned, it wouldn't be that wet underneath. It was only wet where the urine staining was.

**The tenant** (MM) testified that the tenants moved into the rental unit on May 1, 2014 and were evicted for a family member of the landlord with a move-out date of June 1, 2022. The Two Month Notice to End Tenancy For Landlord's Use of Property was given on March 25, 2022. For the last 2 or 3 years the tenancy agreement was renewed every 3 months, and the landlords did a full walk-through before signing for

another 3 months, but not in writing. The landlords never commented on the state of the home, and during the tenancy the landlords did not do any repairs or updating.

The original tenancy agreement indicated no pets, but there were pets present during every inspection by the landlords, and never gave any warnings or complaints to the tenants about damage or smells.

On November 17, 2021 the entire basement living area flooded, believed to be sewage backup because it smelled awful. The landlords showed up 3 days later and removed the carpet in the basement. Another flood occurred a week later and the landlords attended and asked the tenants to mop it up. It was just concrete and was never professionally cleaned, and no professional was called to deal with the flooding.

After the carpet was removed the tenants repainted the basement before new carpet would be installed, which never was during the balance of the tenancy, leaving part of the tenants' living area uninhabitable.

On May 30, 2022 the tenants were asked to attend an inspection, and the other tenant attended. The landlords returned the security deposit on June 15, 2022 and the tenants filed this application on August 18, 2022 because the tenants believed no one was occupying the rental unit. Letters from neighbours have been provided for this hearing which indicate that as of September 7, no one moved in. The tenants believed that was a reasonable time for someone to move in.

Upon gaining access on June 1, 2022 the landlord claims the house smelled like urine, but the carpet was removed and the restoration company was there on July 11, 2022. The tenant is not sure when the landlord removed the upstairs carpet; the landlord's witness testified that he was there in mid-September. The carpet in the basement was already gone in November. Also, the landlords' receipt from the restoration company is dated July 11, which is a month and a half after the tenants moved out. The landlords had already removed the carpet and the house was empty.

The landlord completed walk-throughs several times. During the 8 year tenancy the carpets were never replaced. They were damaged when the tenants moved in, and the move-in condition inspection report would show that, in the living room especially. The tenants expected that damages would be rectified in good faith, but were not.

The tenants have provided a copy of an email exchange with the landlord's witness (MB) dated February 9, 2023 wherein the tenant asks if it is possible when moving 10 + year old carpet that the subfloor could expose pet urine or other smells from 10+ years

ago. The reply from the landlords; witness states, "Yes it is very posable for plywood subfloor to gas off odors from pet stains."

The landlord's receipt about subfloor treatment, and the landlord's daughter moved in on October 4, but the carpet wasn't installed until after October 21, which seems unlikely considering the landlord's testimony that the home wasn't inhabitable.

The tenant also questions the landlords' receipts for garbage dated 2 ½ months or more after the tenants left; the tenant is not convinced that those receipts were for the rental property.

**The second tenant** (SM) testified that the tenant's wife had a high risk pregnancy and the tenant and his mother went to participate in the move-out condition inspection. The landlord had the paperwork, but the other landlord said to not bother, just sign it and the security deposit would be returned. As the tenant was signing off on it, the landlord went to the hallway and started to lift carpet and said that the tenants had trashed his house. The tenant asked the landlords to leave. That was on May 30 and the tenants still had occupancy until June 1.

### Analysis

Where a tenant applies for monetary compensation for the landlord's failure to use a rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property, the onus is on the landlord to establish that the rental was used for that stated purpose commencing within a reasonable time after the effective date of the Notice, or that extenuating circumstances existed that prevented that.

I have reviewed all of the evidentiary material of the parties, with the exception of the tenants' video evidence. The effective date of vacancy contained in the Notice is June 1, 2022, and the landlord testified that the landlord's daughter moved in on October 4, 2022, which is about 4 months, and that repairs commenced on the rental unit on June 1, 2022. The landlord also testified that both landlords work, and the rental unit was worked on until the end of September, 2022, as the landlords had the time and could afford to do the repairs themselves.

There is nothing preventing a landlord from renovating or making repairs to a rental unit prior to a family member moving in. The parties agree that there was a flood in the basement during the tenancy and the carpet was removed in the basement. I do not believe that to be unreasonable, or an unreasonable time after the effective date of the

notice to end the tenancy, and I dismiss the tenants' application for further compensation.

With respect to the landlords' claim for damage, in order to be successful the onus is on the landlords 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 tenants' failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlords made to mitigate any damage or loss suffered.

Compensation for damage or loss is meant to put the claiming party in the same position as if the damage had not occurred. I refer to Residential Tenancy Policy Guideline 40 – Useful Life of Building Elements, which puts the useful life of carpet at 10 years. Therefore, for the tenants to pay for new carpet, the landlords would have new carpet, when the landlord would have had 10 year old carpet if no damage had existed. I find that the carpet has outlived its useful life, and I dismiss the landlords' claim for carpet and carpet fitting supplies.

The landlord also testified that the landlords' daughter pays \$1,000.00 per month for rent, and claims loss of that revenue for 4 months. The landlords have provided no evidence to substantiate that claim, such as a tenancy agreement or proof of payment, and I dismiss the landlords' claim for loss of rental revenue.

The landlords also claim several receipts for garbage clearance from gardens and the house. I note however that the receipts are dated August 15, 2022; September 6, 2022; September 17, 2022; and September 24, 2022, all of which are well beyond the date the tenants moved out and during the repairs or renovations completed by the landlords. Since no move-out condition inspection report was completed and signed by both parties, I am not satisfied that the landlords have established that those receipts relate to the tenants and not to the repairs made. I dismiss the landlords' claims for garbage clearance.

With respect to the biohazard treatment claim, I have reviewed the landlords' evidence and note that the email from the landlords' witness (MB) states that every room had major damage to the floors and urine staining on the cement floor downstairs. I find that that corroborates the testimony of the landlord and of the tenant that after the downstairs flooded, and it flooded twice during the tenancy, no biohazard people attended. The landlords chose to renovate for their daughter to live in the rental unit,

however I am not satisfied that the landlords have established that all of the staining and odor was caused by the tenants' pets or some or all by the pets of previous tenants.

I also accept the undisputed testimony of the parties that the landlord completed an inspection every 3 months without mentioning an odor. The tenants' evidence also suggests that the carpets were never replaced and an email from a carpet company which states that if the previous tenants had pets and the subfloor was compromised with pet urine, it is possible that shampooing the carpets could activate that previous smell.

Considering the evidence before me, I am not satisfied that either party has established their claims.

### Conclusion

For the reasons set out above, the application of the tenants and the application of the landlords are hereby dismissed in their 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 17, 2023

Corrected: March 21, 2023

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Residential Tenancy Branch