



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNEVC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking monetary compensation for the landlord's failure to use the rental unit for the purposes set out in a Two Month Notice to End Tenancy for Landlord's Use of Property.

Both tenants 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.

The landlord advised that all evidence was provided to the tenants on April 13, 2023 by registered mail, but did not receive an 8-page letter which has been provided by the tenants. The tenants did not dispute that. Any evidence that a party wishes to rely on must be provided to the other party. Since the 8-page letter has not been provided to the landlord, I decline to consider it. All other evidence of the parties has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the rental unit was used for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property within a reasonable time after the effective date of the Notice, and for at least 6 months duration?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on July 7, 2016, which expired on July 31, 2017 with a proviso that the tenancy may be renewed with mutual agreement, and the next year, rent will be an extra \$50.00 per month. A copy of the

tenancy agreement has been provided by the tenants for this hearing, which shows that rent in the amount of \$1,350.00 was payable on the 1<sup>st</sup> day of each month, but was increased; the landlord does not recall what or when increases were paid, perhaps to \$1,500.00 per month. There are no rental arrears, and the tenants were not required to pay rent for the last month of the tenancy. The tenancy ended at the end of July, 2021. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$700.00, which has been returned in full to the tenants, although the landlord's husband may have kept \$100.00 since the tenants didn't move out until August 15, 2021. No pet damage deposit was collected. The rental unit is the upper level of a house, and other tenants lived in the lower level, who also moved out at the same time.

The landlord further testified that the tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property, and a copy of pages 1 and 2 of the 4-page notice has been provided for this hearing. It is dated May 22, 2021 and contains an effective date of vacancy of July 31, 2021. 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 landlord also testified that she is not the landlord, only looking after the property as an agent of the landlord; only collecting rent and depositing it into the landlord's account. The landlord did not give the Two Month Notice to End Tenancy for Landlord's Use of Property to the tenants, but her husband signed it.

The landlord was told that the owner's son was putting his apartment for sale and renovating, and the landlord has had no contact with the owner after that. The landlord does not know when, but perhaps after October, 2022 renovations started but does not know why it took so long to renovate or to get started. The landlord does not believe that the owner's son moved in, but has not had any contact with the owner since the Notice to end the tenancy was given.

**The first tenant** (AS) testified that after a month, the tenant went to the rental unit and a lady said it was re-rented. A new tenant was paying \$4,500.00 for the upper unit and the lower unit, white people, who were not related to the landlord. The lady told the tenant that she rented it for her family. The tenant was also told by another person that it was re-rented in perhaps September, 2021.

**The second tenant** (MA) testified that the house had been rented to the tenants and the tenants moved out on August 1, 2021. The landlord took \$100.00 of the security deposit for overholding as a lesson.

Both tenants saw a new family living in the rental unit, and they were renting the whole house. It's a big family who have the upper and lower levels.

### Analysis

Firstly, the landlord testified that she's not really a landlord, but an agent for the owner, who collects rent and deposits the money into the owner's account. The *Residential Tenancy Act* states:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

The tenancy agreement names the landlord as AKV, who is the person who attended this hearing and gave testimony. Therefore, I find that the landlord named in this application is the landlord, and has all of the same obligations as the owner.

Where a tenant makes an application respecting such a Notice, the onus is on the landlord to establish good faith. Also, where a landlord gives a Two Month Notice to End Tenancy for Landlord's Use of Property the landlord must do so in good faith. If the landlord fails to act in good faith after the tenancy ends as a result of that Notice, there are punitive damages provided in the law. A landlord must establish that the rental unit

was used for the purpose contained in the Notice within a reasonable time after the effective date of the Notice, and must use it for that purpose for no less than 6 months. The consequences for failing to do so is monetary compensation to the tenants that is equivalent to 12 months' rent.

In this case, the effective date of vacancy is July 31, 2021. The party's testimony differs as to when the tenants actually vacated, but the landlord had no right to keep any portion of the security deposit without the tenant's written consent.

I accept the undisputed testimony of the tenants that neither the landlord's son nor the owner's son ever moved in, but renovated to re-rent the upper and lower levels together for a higher amount of rent. Therefore, I find that the landlord did not act in good faith or use the rental unit for the purpose stated in the Two Month Notice to End Tenancy for Landlord's Use of Property.

I grant a monetary order in favour of the tenants in the amount of \$18,000.00. 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, 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 \$18,000.00.

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: May 23, 2023

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Residential Tenancy Branch