



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing was scheduled to convene at 1:30 p.m. on June 13, 2023 by way of conference call concerning an application made by the tenant seeking a monetary order for the landlord's failure to comply with the *Residential Tenancy Act* or use the rental unit for the purpose stated 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 attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord joined the call.

The tenant testified that the landlord was served with the Notice of Dispute Resolution Proceeding and all evidence by registered mail on October 2, 2022 at the address for service of the landlord as contained in the tenancy agreement and in a notice to end the tenancy. The tenant has provided a copy of a Canada Post Registered Domestic Customer Receipt and a Canada Post cash register receipt bearing that date, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for the landlord's failure to comply with the *Act* or used the rental unit for the purpose stated in a Two Month Notice to End Tenancy For Landlord's Use of Property?

### Background and Evidence

The tenant testified that this fixed-term tenancy began on April 1, 2020 and expired on March 31, 2021. A copy of the tenancy agreement has been provided for this hearing and it states that at the end of the fixed term the tenancy is ended and the tenant must vacate the rental unit; the reason being, "Sign Mutual Agreement." The tenant testified that the tenant vacated the rental unit on April 15 or 16, 2022 in accordance with the Notice, but did not sign a Mutual Agreement to End Tenancy.

Rent in the amount of \$1,500.00 per month was payable on the 1<sup>st</sup> day of each month, which was increased to \$1,550.00 during the tenancy, and there are no rental arrears. At the outset of the tenancy the tenant paid a security deposit to the landlord in the amount of \$750.00, all of which was returned to the tenant. The rental unit is a condominium suite, and the landlord did not reside on the property during the tenancy.

The tenant further testified that the landlord named in this dispute served the tenant with a Two month Notice to End Tenancy For Landlord's Use of Property, and a copy has been provided for this hearing. It is dated February 4, 2022 and contains an effective date of vacancy of April 30, 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 tenant had suspicions that it was not issued in good faith because the landlord had tried to increase rent by \$100.00 which was more than permitted by law. A month or 2 later the landlord served the Notice to end the tenancy.

After vacating the tenant went nearby the rental unit every couple of days to see if there was any activity; the rental unit is on the first level of the condominium building. The tenant was quite diligent for 4 months and there was no activity. After 4 months the tenant decreased visits to twice per week and there was still no activity, blinds were closed, no vehicle was parked in the underground parking spot, which was visible from off-site. There was no intercom working, even up to 2 days ago.

### Analysis

Generally, where a tenant makes such an application, the onus is on the landlord to establish that the rental unit was used for the purpose stated 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, and for no less than 6 months duration. However,

since the landlord did not attend the hearing, although duly served, the tenant gave testimony and provided evidence which I have reviewed.

The tenancy agreement specifies that at the end of the fixed term the tenancy ends and the tenant must move out for "Sign Mutual Agreement," but the tenant testified that he didn't sign a Mutual Agreement to End Tenancy and moved out in accordance with the Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice). I accept that, and a landlord may not require a "vacate clause" in a tenancy agreement if the tenancy agreement is a sublease agreement, or if a landlord or close family member intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term. In this case, the landlord instead issued a Two Month Notice to End Tenancy For Landlord's Use of Property. Since the tenancy did not end at the end of the fixed term, I find that the tenancy reverted to a month-to-month tenancy.

I also find that as a result of the Notice, the tenant vacated the rental unit. I am also satisfied that the landlord has not accomplished the stated purpose for ending the tenancy, and the tenant has established a claim of 12 times the monthly rent.

The tenant testified that rent was increased to \$1,550.00 during the tenancy, but has not provided any evidence of that, and the tenancy agreement specifies \$1,500.00 per month. The regulations indicate by how much a landlord can increase rent and when. There were no allowable rent increases in 2021, which would have been the earliest that a landlord could increase rent. In 2022 the allowable increase was 1.5%, which in this case amounts to \$22.50. Therefore, I am not satisfied that the tenant has established that rent was more than stated in the tenancy agreement, \$1,500.00 per month. Therefore, I find that the tenant has established a claim of \$18,000.00 (12 x \$1,500.00).

Since the tenant has been successful with the application, the tenant is also entitled to recover the \$100.00 filing fee from the landlord.

I 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 \$18,100.00. 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 an order of that Court.

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 \$18,100.00.

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: June 13, 2023

---

Residential Tenancy Branch