



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing was scheduled to convene at 1:30 p.m. on July 25, 2023 by way of conference call concerning an application made by the tenants seeking monetary compensation for the landlords' 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.

Both tenants attended the hearing, one of whom gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlords joined the call.

The tenant advised that the landlords were individually served with the Notice of Dispute Resolution Proceeding and evidence by registered mail on November 3, 2022, and has provided a copy of Canada Post cash register receipt containing 2 tracking numbers. The tenant advised that the registered mail was sent to the landlord at an address contained in the Notice to End the Tenancy. I accept that, and I find that the landlords have been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

Have the landlords complied with the *Residential Tenancy Act* with respect to the reasons for issuing 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 November 1, 2021 and reverted to a month-to-month tenancy after April 1, 2022. The tenants vacated the rental unit on August 31, 2022. Rent in the amount of \$2,500.00 was payable on the 1st

day of each month and there are no rental arrears. On October 19, 2021 the landlords collected a security deposit from the tenants in the amount of \$2,500.00, all of which has been returned to the tenants. The rental unit is the upper part of a house; the lower level was occupied during the tenancy by the landlord. A copy of the tenancy agreement has been provided for this hearing.

The tenants were served 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 July 11, 2022 and contains an effective date of vacancy of September 15, 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 father or mother of the landlord or landlord's spouse.

The parties had verbal confirmation that when the tenants' farm sold, they would buy another property and move out. The property manager had lived on the property in a separate suite, and the property manager spoke to the tenants several times starting in April, 2022 asking when the tenants were moving out because the property manager was wanting to move in.

The tenant went to the rental unit after vacating to retrieve some items, and the landlord's property manager had moved in. The property manager's vehicles were in the driveway and the property manager was cooking in the kitchen. The property manager directed the tenant to where the items to be retrieved were, but wouldn't talk about the landlord's mother moving in.

The tenants moved out as a result of the Two Month Notice to End Tenancy for Landlord's Use of Property, and did not dispute it; that was too much pressure. The tenants are still renting, and have not yet purchased a house. The tenants did not want to move out, but the landlord said that the landlord's mother was going to move in from a smaller place, and the landlord would move in as well after receiving some medical treatment.

The tenants' application seeks \$22,800.00 which is 12 times the monthly rent that the tenants currently pay, not knowing which rent should be calculated; the rent the tenant pays now, or the rent that the tenants paid during the tenancy.

Analysis

Where a tenant seeks monetary compensation for the landlord's failure to comply with the *Residential Tenancy Act* and use the 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 unit was used for that purpose commencing within a reasonable time after the effective date of the Notice and for at least 6 months duration.

In this case, the landlords did not attend the hearing. The tenant testified that the landlord had said that the landlord's mother was going to move in from a smaller place, and the landlord would move in as well after receiving some medical treatment. The Notice states that the rental unit will be occupied by the landlords' mother or father.

The tenant testified that the landlord's property manager has moved into the rental unit, who was recognized by the tenant as the property manager who served the Notice, and recognized the vehicles, while the property manager was in the kitchen of the rental unit cooking. The tenant also testified that the property manager had been enquiring about when the tenants would move out because the property manager wanted to move in.

I see no evidence that the property manager is the mother or father of the landlord or the landlord's spouse. I find that the landlords did not act in good faith.

The *Act* states that in addition to compensation in the equivalent of 1 month's rent to the tenants, if the landlord does not use the rental unit for the stated purpose in the Notice within a reasonable time after the effective date of the Notice and for at least 6 months duration, the landlord must pay compensation to the tenants in the equivalent of 12 months' rent payable under the tenancy agreement, not 12 times the monthly rent that the tenant pays currently to another landlord.

The tenancy agreement states that rent is \$2,500.00 per month, and 12 times that is \$30,000.00, and I find that the tenants have established that claim.

Since the tenants have been successful with the application the tenants are also entitled to recover the \$100.00 filing fee from the landlords for the cost of the application.

I grant a monetary order in favour of the tenants as against the landlords in the amount of \$30,100.00. The landlords 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 tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$30,100.00.

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: July 26, 2023

Residential Tenancy Branch