



# 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 comply with the *Residential Tenancy Act* or used 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 and the landlord attended the hearing and the landlord was accompanied by Legal Counsel, an Articled Student and a support person. The landlord and the tenant each gave affirmed testimony and the parties, or Legal Counsel were given the opportunity to question each other and to give submissions.

Issues arose with respect to the tenant being provided with all of the landlord's evidence. However, the tenant conceded that registered mail had not been picked up, and by consent all evidence provided by the parties has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the landlord has complied with the *Act* and used the rental unit 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, or has the landlord established that extenuating circumstances prevented the landlord from doing so?

### Background and Evidence

**The landlord** testified that the rental home was purchased effective June 1, 2022 and the tenant resided there at that time. The landlord has no written tenancy agreement, however believes that rent in the amount of \$1,850.00 was payable on the 1<sup>st</sup> day of

each month and there are no rental arrears. The landlord believes that a security deposit in the amount of \$750.00 was returned to the tenant by adjusting it in the rent during the last month of the tenancy; the tenant only gave partial rent for the month of July, 2022 and got free rent for August. The tenancy ended on August 31, 2022. The rental unit is a single family house.

The landlord 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 06/24/2022 and contains an effective date of vacancy of 08/31/2022. 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), indicating the father or mother of the landlord or landlord's spouse.

The landlord gave the Notice so his parents could move in. The landlord went to India on August 27, 2022 and the landlord's family had return tickets to return on October 28, 2022. Copies of itineraries have been provided for this hearing.

However, the landlord's mother had a tumor on her back and the return tickets for the landlord's parents were cancelled. On December 26, 2022 the landlord's mother was admitted into hospital and diagnosed with Lymphoma and had surgery to remove it. That required hospitalization for 2 days and a few follow-up treatments in hospital during January, 2023. Then her departing flight was scheduled for January 26, 2023 to Canada.

The landlord purchased the property for his parents, but his mother had difficulty moving and developed other complications. As a result, she could no longer take care of herself and needed a cane and assistance; she could not live alone. The landlord is planning to go back to India for medication.

Meanwhile, the property was empty and expenses increased, and the landlord was having a difficult time. For a short period the rental house was rented on Airbnb, which started during the 4<sup>th</sup> week of January. The landlord sold the house last week at a significant loss.

**The tenant** testified that she lived in the rental house for 11 years, and did not know that it was selling until it was purchased by the landlord. When introduced, the landlord arrived with a friend and told the tenant they were planning to keep it as a rental, and perhaps if the landlord's parents came to Canada. However, it was only 2 weeks later that the tenant was served with the Notice to end the tenancy.

The house sat empty. Neighbours told the tenant about Airbnb advertisements and about a lot of problems. No one ever moved in.

The landlord had advised the tenant that the landlord had another landlord in mind to assist the tenant, but that rental home was not in the community.

#### SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

The home was purchased and there were discussions about where the parents of the landlord would live, and the landlord decided it should be locally. The landlord's parents were to move in once renovations were completed and the family met in India.

Recovery time was not known and the Airbnb was used, but it was ready for the landlord's parents to move into. Extenuating circumstances exist by which the landlord was not able to fulfill the moving in portion as per the Notice to end the tenancy.

#### SUBMISSIONS OF THE TENANT:

If the landlord had any justification or rationale, the tenant does not understand why it wasn't brought to the tenant's attention in the first place. The Itinerary for the landlord's parents is for January 26, 2023 which is after the surgery.

#### Analysis

A landlord may give a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) in some cases, one of which is for the landlord's parents (or the parents of the landlord's spouse) to occupy it, but must act in good faith and must accomplish that stated purpose within a reasonable time after the effective date of the Notice and for at least 6 months duration. If the landlord fails to comply, the landlord must pay compensation to the tenant in the amount of 12 times the monthly rent. Where a tenant makes an application for the compensation, the onus is on the landlord to establish that. The law also states that I may excuse the landlord from paying the compensation if, in my opinion, extenuating circumstances prevented the landlord from complying.

I have reviewed all of the evidence, including the hospital documentation showing dates of December 26, 2022, January 3, 2023 and January 21, 2023 as well as the itineraries for the landlord's parents to depart on January 26, 2023. I also accept the testimony of the landlord that the landlord's mother needs care and assistance and cannot live alone. I accept that extenuating circumstances existed that prevented the landlord from accomplishing the stated purpose.

Therefore, I dismiss the tenant's application.

Since the tenant has not been successful, I decline to order that the tenant recover the filing fee from the landlord.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its 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: July 13, 2023

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Residential Tenancy Branch