



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding INTERLINK REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking monetary compensation from the landlords for the landlords' failure to comply with the *Residential Tenancy Act* or 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.

Both tenants and the landlord attended the hearing with the landlord's spouse, as well as 3 people from the Property Management Company. The landlord, the landlord's spouse, and one of the persons from the property management company each gave affirmed testimony. Both tenants also gave affirmed testimony. The parties were given the opportunity to question each other and the Property Manager, and to give submissions.

The tenants indicated that all evidence had been provided to the landlord, however the landlord indicated that the evidence sent to the Property Management Company was forwarded to the landlord, but the landlord only received the description of some of the evidence. The tenant indicated that the evidence was dropped off at the office of the Property Management Company because that's the address the tenants had on record for the landlord.

I found that the tenants did what they were required to do, and all evidence of the parties has been reviewed and is considered in this Decision.

At the commencement of the hearing, the representatives of the Property Management Company suggested removing the name of the Property Manager from the Style of Cause. The tenants did not oppose that, however it was opposed by the landlord, and I

declined to do so. However, I alerted the parties that the Supreme Court of British Columbia, on Judicial Review held that a Property Manager acting on instructions from the owner cannot be held responsible for a landlord's failure to comply with the law.

### Issue(s) to be Decided

Has the landlord established that the landlord has complied with the *Act* and has acted in good faith by using the rental unit for the purpose contained in the 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 at least 6 months duration?

### Background and Evidence

**The landlord** (HJ) testified that this fixed-term tenancy began on December 1, 2018 and expired on November 30, 2020, which ultimately ended at the end of August, 2022. The tenancy agreement, a copy of which has been provided by the tenants for this hearing shows that rent in the amount of \$2,380.00 was payable for the first 12 months of the tenancy, and \$2,427.00 for the balance of 12 months, payable on the 1s day of each month, and there are no rental arrears. The rental unit is a townhouse. The landlord is not sure about a security deposit or a pet damage deposit.

The landlord also testified that a Two Month Notice to End Tenancy For Landlord's Use of Property was served to the tenants, and a copy has been provided by the tenants for this hearing. It is dated June 24, 2022 and contains an effective date of vacancy of August 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), specifying the landlord or the landlord's spouse.

The landlord and the landlord's spouse moved into the rental unit right away, not anyone else. Renovations were completed along the way starting sometime in mid-September, 2022. The landlords also have a place in Seattle and travelled back and forth a little bit, but did not sell or re-rent the rental unit. Utilities were activated right away and the landlords moved in, taking some time to determine what renovations to do. It's their home.

The landlord and spouse also went overseas around October 17, 2022 and returned on January 28, 2023. Due to COVID, the landlords had to stay for awhile; there was no other motive and the Notice was given in good faith.

**The landlord's spouse** testified that as soon as the tenants moved out on August 16, 2022 the landlords moved in right away, but had planned to move in at the end of August. The tenants left the rental unit in good faith, however after a couple of weeks the landlord and spouse decided that paint and flooring was not in good shape for long term living, and it took awhile to get a contractor.

The landlord and spouse don't have much furniture. They only had a table and bed, and live a very simple life. The tenants moved out on the 16<sup>th</sup> of August and on the 22<sup>nd</sup> the landlord got the key and lived there for a couple of weeks until early September, then started looking for contractors. Most of the time the landlords stayed in the rental unit until contractors started to rip stuff out; it was not good for the landlord's health. The landlord and spouse stayed there probably to the end of September, and only during three weeks when flooring and painting were being done, the landlord and spouse stayed elsewhere.

The landlord received a call from family overseas indicating that the in-law of the landlord's spouse had a heart attack and the landlord and spouse went back to see family. Then the landlord and spouse were quarantined, which was not planned as a very unexpected situation. At the end of January, 2023 everything was stabilized and they returned.

If the landlord and spouse didn't want to live there, they would have lost money. They wanted to live there.

**The landlord's witness** (KY) testified that as a Property Manager, the landlord company named in this dispute followed instructions of the landlord to give the 2 Month Notice, which they understood. The witness believed and trusted that the landlords would move in at the end of August, 2022. They understood what their positions were.

The increase of rent contained in the tenancy agreement for the 2<sup>nd</sup> year of the tenancy was a mistake. When it was negotiated, the tenants wanted a 2 year contract.

The security deposit amount was based on the 1<sup>st</sup> year of the rental amount, and that was paid, but no pet damage deposit was paid. The security deposit was returned to the tenants within 15 days.

**The first tenant** (PB) testified that the tenants spoke to neighbours who said that renovations were being done and the landlords had gone overseas. The tenant went by there almost every weekend but there was no one there. From the date the tenants moved out on August 16, 2022 to mid-September, and going into January, 2023 the tenant is certain no one was living there. There was no furniture and curtains were left open.

**The second tenant** (CB) testified that there is contradictory information from the landlords about when they moved in or went overseas. They didn't start living in the rental unit until January, 2023. The tenant's belief is that their intent was to not move in until January after going overseas.

### Analysis

Where a tenant claims monetary compensation from the landlord 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 Notice), the onus is on the landlord to establish that the landlord has complied with the *Act* and used the rental unit 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 effective date of vacancy is August 31, 2022, and the tenants moved out prior to that, on August 16, 2022. The reason for ending the tenancy is for the landlord to occupy the rental unit, which occupancy ought to commence shortly after August 31, 2022.

I have reviewed all of the evidentiary material of the parties. The landlord has provided copies of utility bills, and for hydro at the address of the rental unit, the billing runs from October 18, 2022 to July 7, 2023. The Fortis Gas bills run from August 26, 2022 to July 13, 2022, for the address of the rental unit.

I have also reviewed the letter from the neighbour provided by the landlord, and the messages from a person appearing to be the same neighbour which have been provided by the tenants. They include a message dated November 8 stating that the landlords are at the rental home on and off and are going to visit family overseas, and that they stayed for a few weeks prior and did some renovations. Another, in January,

2023 states that the landlord's family member was ill, so the landlords had not yet returned.

"Occupy" is defined in Black's Law Dictionary 6th ed., 1990 at p.1079:

Occupy. To take or enter upon possession of, to hold possession of; to hold or keep for use; to possess; to tenant .... to take or hold possession".

I also refer to Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, which states, in part:

"Other definitions of "occupy" such as "to hold and keep for use" (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see Section E). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused."

The *Residential Tenancy Act* states that I may excuse the landlord from paying the tenant the compensation set out in the *Act*, if I find that extenuating circumstances prevented the landlord from accomplishing the stated purpose for ending the tenancy within a reasonable time, and for at least 6 months duration.

I am satisfied in the evidence that the landlords occupied the rental unit commencing on August 22, 2022, left for a short time during renovations and then had to go overseas due to a parent's heart attack, leaving in mid-October, 2022. I also accept that the landlord and spouse were quarantined in that Country and could not return until January, 2023. I am also satisfied that the landlord has not sold or re-rent the rental unit.

I find that the landlord has established that extenuating circumstances existed that prevented the landlord from using the rental unit for the entire period between the effective date of the Notice and January 31, 2023.

The tenant's application is therefore dismissed.

Since the tenants have not been successful with the application the tenants are not entitled to recover the filing fee from the landlord.

Conclusion

for the reasons set out above, the tenants' 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: September 01, 2023

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Residential Tenancy Branch