



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, MNDCT, DRI, OLC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking the following relief:

- an order cancelling a notice to end the tenancy for landlord's use of property;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- disputing a rent increase;
- an order that the landlords comply with the *Act* or the tenancy agreement; and
- to recover the filing fee from the landlords for the cost of the application.

One of the named tenants and both landlords attended the hearing and each gave affirmed testimony. The tenant was also assisted by an interpreter who was affirmed to well and truly interpret the hearing from the English language to the tenant's Native language and from the tenant's Native language to the English language to the best of the interpreter's skill and ability.

The parties were given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence of the parties has been reviewed; the evidence I find relevant to the application is considered in this Decision.

### Issue(s) to be Decided

- Have the landlords established that the Two Month Notice to End Tenancy For Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act* and in good faith?

- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for overpayment of rent and compensation during renovations?
- Have the tenants established that rent has been increased contrary to the *Act*?
- Have the tenants established that the landlords should be ordered to comply with the *Act* or the tenancy agreement, specifically with respect to rent increases?

### Background and Evidence

**The first landlord** (BSD) testified that this tenancy began on April 1, 2022 by an oral agreement. The parties entered into a written fixed-term agreement effective July 30, 2023 until December 31, 2023 at which time the tenants must vacate for the landlord's parents to move in. The tenants still reside in the rental unit. A copy of the tenancy agreement has been provided for this hearing, which was signed by 1 landlord and 1 tenant on July 30, 2023.

In the oral agreement the tenants paid rent in the amount of \$1,450.00, and then when the tenancy agreement was signed, rent was set at \$1,750.00. The landlords had told the tenants that once renovations were completed rent would increase. Rent is due on the 1<sup>st</sup> day of each month, and there are no rental arrears. In April, 2022 the landlords collected a security deposit from the tenants in the amount of \$725.00 which is still held in trust by the landlords and no pet damage deposit was collected. The rental unit is a basement suite and the landlords reside in the upper level with their 2 kids.

On October 31, 2023 the landlord pasted to the door of the rental unit Page 1 of a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice) and gave 4 pages of the Notice to the tenant. A copy of the Notice has not been provided by the landlord for this hearing, and pages 1 and 2 only of the 4-page form has been provided by the tenants. It is dated October 30, 2023 and contains an effective date of vacancy of December 31, 2023. 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 landlord testified that the landlord's mother has arrived from out of the Country, is now living with the landlords, and will be moving into the rental unit.

With respect to the rent increase, the landlord testified that flooring, electrical and other work has been completed and the landlord talked to the tenants. At that time, it took too much time to finish renovations in the rental unit. Sometimes the tenants refused to let tradespeople in so it took 4 or 5 months longer than it should have. However, the parties were in agreement about increasing rent.

The tenants still owe \$600.00 rent for October and November, 2022. The landlords have provided a copy of an Interac e-transfer for \$1,000.00 dated October, 2022 and testified that the same was received for November.

Currently the rental unit is occupied by the 2 tenants with 2 kids, and a girl. The landlord is a commercial truck driver and not home a lot, and does not know who lives there.

**The second landlord** (AD) testified that the landlords' concern is that the landlords' mother wants her own suite; nothing else.

**The tenant** testified that the tenants did not sign a tenancy agreement. The tenant believes the landlords photoshopped the tenant's signature from the RTB 420 Request to Amend that the tenants served to the landlords.

The tenant also testified that the Notice was served on November 4, 2023 and the tenant only received 2 pages.

Construction in the rental unit started on June 29 and lasted for 8 months. The landlord called the tenant and said he wanted to increase the rent. The tenant asked how much the landlord wanted. On July 10 the tenant paid rent and told the landlord that while renovations were going on rent should have been \$1,300.00 and then return to \$1,450.00 per month. Then the landlord accused the tenants of not paying rent, but wanted \$2,000.00 and wouldn't go by the rules. Then the landlord suggested \$1,750.00 per month and the tenant verbally agreed under duress, but not in writing.

The tenants have provided a copy of an advertisement for rent of a suite in the landlord's home for \$1,600.00 per month available November 15, 2023, and the tenants were pressured by the landlord's brother-in-law to move out. The tenant's wife and daughter have been traumatized by this. The tenants are stressed out and the family does not feel comfortable.

The tenants claim:

- \$100.00 for recovery of the filing fee;

- \$271.00 per month for a refund of overpayment of rent from August 1, 2023 to November, 2023 (\$1,084.00); and
- Recovery of \$200.00 per month for 8 months of renovations (\$1,600.00).

#### SUBMISSIONS OF THE LANDLORDS:

The advertisement provided by the tenant is for a 1 bedroom unit. There are 2 basement suites and the 2 bedroom unit is for the landlord's mother. The other unit was just rented in November, 2023.

#### SUBMISSIONS OF THE TENANTS:

The landlords never gave 24 hours notice to enter for the renovations. The tenants seek compensation for the renovations for 8 months, and will move out as soon as the tenants can find another place.

#### Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. Also, in the case of a Two Month Notice to End Tenancy For Landlord's Use of Property, the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in the Notice.

The *Act* requires any notice given by a landlord to be in the approved form. The tenant testified that only 2 pages of the 4-page form were served and has provided copies of them. The landlord testified that page 1 was attached to the door and 4 pages were handed to the tenant, but has not provided any copies of what was allegedly served. Therefore, I cannot be satisfied that it was given in the approved form. Further, where a landlord has another unit for the landlord's parent to occupy, but rents it out instead, the landlord cannot be considered to be acting in good faith. Therefore, I cancel the Notice and the tenancy continues until it has ended in accordance with the law.

The tenant denies signing the tenancy agreement on July 30, 2023, but testified that he orally agreed to the rental increase under duress. The law states that a tenant may not dispute a rent increase that complies with the *Residential Tenancy Act*, which states:

- 43** (1) A landlord may impose a rent increase only up to the amount
- (a) calculated in accordance with the regulations,
  - (b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

I have reviewed all of the evidence of the parties. The landlord has provided an unsworn, unaffirmed statement from a person purporting to have witnessed the parties sign the tenancy agreement. I have reviewed the tenancy agreement provided by the landlord and the Request to Amend provided by the tenant to compare the signatures. I find that the signatures are much too identical to satisfy me that the tenant signed the tenancy agreement.

Having found that the tenant did not sign the tenancy agreement, rent must remain at the originally agreed amount of \$1,450.00 per month.

I have also reviewed the interac e-transfers to the landlord. The tenants have paid \$1,750.00 per month from August to November, 2023, a total of 4 months, and I find that the tenants are entitled to recover the sum of **\$1,200.00** ( $4 \times \$300.00 = \$1,200.00$ ).

Where a party makes a monetary claim for damage or loss, the claiming party must satisfy a 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the tenants claim recovery of rent at \$200.00 per month for 8 months of renovations.

A landlord must not enter a rental unit occupied by a tenant unless the tenant agrees at the time of entry, or the landlord serves the tenant with a notice to enter, which must contain the date and time of entry, the reason for entry which must be reasonable. The notice must be received by the tenant no less than 24 hours before entry. For the landlord to say that the tenant didn't cooperate which resulted in the renovations to take much longer, is not a defence.

I agree with the tenant that the tenancy has been devalued by the renovations, and I find that the tenants have established a claim of \$200.00 per month for 8 months, or **\$1,600.00**.

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

I order that the landlords comply with the *Act* by refraining from increasing rent contrary to the law and by refraining from entering, or allowing contractors to enter the rental unit unless that landlords have given notice in accordance with the law.

I grant a monetary order in favour of the tenants as against the landlords in the amount of **\$2,900.00** (\$1,200.00 + \$1,600.00 + \$100.00 = \$2,900.00). I order that the tenants may reduce rent for future months until that sum is realized, or may serve the order upon the landlords which may be filed in the Provincial Court of British Columbia, Small Claims division for enforcement as an order of that Court.

### Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy For Landlord's Use of Property dated October 30, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

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 \$2,900.00.

I hereby order the landlords to comply with the *Act* by refraining from increasing rent contrary to the law, and by refraining from entering the rental unit, or allowing contractors to enter the rental unit unless the landlord has given sufficient notice as required by the law.

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: December 22, 2023

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Residential Tenancy Branch