



# 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 on December 29, 2023 by way of conference call concerning an application made by the tenants seeking monetary compensation because the tenancy ended as a result of a two, four or 12 Month Notice to End Tenancy, and the landlords have not complied with the *Residential Tenancy Act* or used the rental unit for the stated purpose, and to recover the filing fee from the landlords for the cost of the application.

The hearing did not conclude within the time scheduled and I adjourned it to continue on January 10, 2024. My Interim Decision was provided to the parties after the first scheduled date.

One of the named tenants and both named landlords attended the hearing on both scheduled dates. The landlords were accompanied by Legal Counsel and the tenant was accompanied by an Agent on both scheduled dates.

None of the parties gave affirmed testimony, and their representatives consented to the hearing being conducted by submissions given by the landlords' Legal Counsel and the tenants' Agent. The parties affirmed that all evidence provided is true to the best of their knowledge and belief. The representatives of the parties agreed that all evidence should be accepted and considered. Therefore, all evidence has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Have the landlords established that the landlords have acted in good faith and complied with the *Act* respecting a Two Month Notice to End Tenancy For Landlord's Use of

Property, or have the landlords established that extenuating circumstances prevented the landlords from using the rental unit for the purpose contained in the Notice within a reasonable time after the effective date of the Notice?

### Background and Evidence

#### **Submissions of the landlords' Legal Counsel:**

This fixed-term tenancy began on February 1, 2021 and was to revert to a month-to-month tenancy after January 31, 2023. The tenancy ended on January 31, 2023. A copy of the tenancy agreement has been provided by the tenants for this hearing. Rent in the amount of \$2,850.00 was payable on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,400.00 which has been returned to the tenants in full, and no pet damage deposit was collected. The rental unit is a single family dwelling.

On November 21, 2022 the landlords served the tenants with a Two Month Notice to End Tenancy For Landlord's Use of Property by mail. A copy has been provided for this hearing by the tenants, and it is dated November 1, 2022 and contains an effective date of vacancy of January 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 landlord or the landlord's spouse and the father or mother of the landlord or landlord's spouse.

The intent of the landlords was for the mother of one of the landlords to occupy the rental unit, however due to extenuating circumstances regarding her health and medical concerns, the landlord's mother, currently residing in another Country, did not move in.

The landlord's mother began to prepare for the move in September, 2022. Her passport had expired and she knew she needed to get one. The process to renew required proving a relationship between her and the landlord.

On November 30, 2022 the landlord's mother had a routine medical procedure, recovered and then resumed renewal of her passport application. A copy of an Invitation Letter as translated has been provided for this hearing, seeking approval of the landlord's mother's passport application. During this time, and on December 16, 2022 the landlord's mother had a blockage in blood vessels. She got the passport on March 17, 2023 still planning to move to Canada. A week later, during a follow-up medical appointment, the landlord's mother learned that she had to have an

hysterectomy, and was admitted into hospital on May 10, 2023 and released on May 29, 2023.

The landlords then allowed showing the property to re-rent. The rental unit was unoccupied until then, but the landlords decided to not re-rent.

At the time the landlord's mother was released from hospital the doctor ordered that she take 3 months off with no bathing or heavy labour. After 3 surgeries over a short amount of time, she reconsidered moving to Canada. She applied for a Visa and a copy of a letter dated September 4, 2023 has been provided for this hearing, which confirms that the application had been received by Immigration, Refugees and Citizenship Canada on September 4, 2023. However, the landlord's mother cannot live independently and will stay in the landlords' family residence, and is still waiting for the Visa to be approved.

During the tenancy, the property was managed by a person, who discussed with the tenants that the landlord's mother might be coming and might rent something close by or into the rental property. He suggested a new tenancy agreement with no increase in rent because the landlords were considering whether they wanted to rent another place for the landlord's mother, but prices were quite high. A copy of 2 emails property manager dated October 22, 2022 has been provided for this hearing by the tenants, which indicates that the tenancy will end on January 31, 2023 and a new fixed-term tenancy agreement will be sent soon, and to please sign the mutual agreement.

In the meantime, since the surgeries, and in August, 2023, the landlords listed the house for sale since it is unlikely that the landlord's mother could live there. In November, 2023, having received no offers to purchase, the landlords cancelled the MLS listing. The landlords are trying now to re-rent for \$5,000.00 per month, a year later, because the landlord's mother is not likely to live there. Once the travel Visa is issued, she will live at the landlords' current residence. She is able to travel at this time and doctors are allowing it.

The Two Month Notice to End Tenancy For Landlord's Use of Property has 2 boxes checked, and only 1 needs to be checked to be able to issue such a Notice. The landlords were planning to alternate living with the landlord's mother, who was aged 74 at that time, but the landlords were not both going to live there. The Notice is not defective, so there was no need for further clarification. The landlords acted in good faith; the landlord's mother intended to travel and live in Canada.

**Submissions of the tenants' Agent:**

Three main points:

1. The landlords could have, but did not accomplish the stated purpose for ending the tenancy within a reasonable time after the effective date of the Notice. Page 2 of the Notice has 2 boxes checked, and the landlords' Legal Counsel did not deny that and submitted that the landlords did not need to clarify the stated purpose. Therefore, the landlords' broad stated purpose and had lots of flexibility but did not accomplish either purpose. If any had, there would not be a need for a hearing.

The landlords had no intention to move in. The landlords' address is about 3.9 km from the rental property. There is no evidence to suggest or justify the failure to move in regardless of how close it was. The landlords had no honest intention to accomplish the stated purpose.

2. The medical condition of the landlord's mother is not extenuating circumstances. According to the Residential Tenancy Policy Guideline, evidence is required to show what prevented the landlords from accomplishing the stated purpose, or that it could not be anticipated. The landlords argue that the medical condition prevented the landlord's mother from moving in, and that the matter that prevented that was the travel document. However, in September, 2022, two months before the Notice was issued to the tenants, the landlords knew that the landlord's mother didn't have a valid passport. A reasonable person would wait until there was some information that the passport would be issued.

January 31, 2023 was the earliest date that the landlords could end the fixed term tenancy. The landlords didn't want to wait any longer, knowing that the landlord's mother could not travel without travel documents. She is now healthy and cleared by doctors, but is still waiting for a Visa. It's been more than 1 year since the Notice to end the tenancy was issued. Medical condition is not an extenuating circumstance, and the landlords anticipated lack of travel documents.

3. The landlords have shown that they have not acted in good faith. The landlords tried to force a rent hike, and a copy of an unsigned Mutual Agreement to End Tenancy effective January 31, 2023 has also been provided. A copy of a new tenancy agreement has also been provided which specifies a fixed term commencing on February 1, 2023 and expiring on January 31, 2024 for rent in the amount of \$3,600.00 on the 1<sup>st</sup> day of each month. On October 22, 2022 the landlords, through the property manager sent the tenants the new termination agreement and a new tenancy agreement, asking the tenants to agree to terminate the existing tenancy agreement, and enter into a new tenancy agreement, which required a 26% rent increase, and a mutual arrangement to circumvent the law. In order to enforce the rent hike, the landlords threatened to evict if the tenants didn't agree. The

tenants considered the proposal but refused because it was unjust, and the landlord issued the Notice just a few days after the tenants refused.

The earliest that the landlord could terminate the fixed term is the same date that the Notice is effective. Although treated poorly, the tenants acted in good faith and moved out, hoping the landlord would also act in good faith.

However, the landlords did not accomplish the broad stated purpose for ending the tenancy. The landlords then tried to re-rent. On March 12, 2023 a friend of the tenants viewed the property, which was for lease. The landlords were trying to re-rent 2 months after evicting the tenants. Then the landlords tried to sell the property and an MLS advertisement has been provided as evidence. It was listed from August to November, 2023, then the landlords again tried to re-rent, as of December 16, 2023 for \$5,000.00 per month, which is a 75% increase. Throughout, the landlords did not move themselves in even though they live a 7-minute drive from the property and had every opportunity to accomplish the purpose for ending the tenancy. The series of actions clearly show that the landlords wanted to get rid of the tenants in order to re-rent.

The consistent actions of the landlords show that the landlords never intended to move in, and the only intent was making money, and used the mother's medical condition as an excuse, knowing the landlord's mother would not be able to travel to Canada despite her medical condition. In any event, the landlord or spouse could have moved in.

#### CLOSING SUBMISSIONS OF THE LANDLORDS' LEGAL COUNSEL:

The rental property has been vacant for a whole year, since January, 2023. The landlords did not reside there themselves and had no obligation to separate the family. The original purpose was for the landlord's mother to live there and for the landlords to alternate staying there. That was always the purpose, not either/or, but at the same time. The medical issues are extenuating circumstances. Visa and passport would have been applied for much earlier. The landlord's mother applied for the passport at the beginning of March, 2023 and received it in mid-March; the process in that Country is very brief. Except for the medical condition, she would have been able to apply for the Visa earlier if the medical issues had not arisen. Listing the property for rent, then for sale, and again for rent were all unplanned and completely due to the medical issues which have not improved. Her condition was good and then not good. In August, 2023 it was quite certain that even if she came to Canada, she needed extensive care. The landlords are now trying to mitigate by not losing an entire year of rent, losing a source of income. The landlords did not serve the Notice in bad faith but fully intended it for the landlord's mother, and it took a lot of effort for her to obtain the passport and the Visa. It was a stressful year

for the landlords and the landlord's mother. Extenuating circumstances existed, and it was not possible for the landlords to accomplish the stated purpose for ending the tenancy.

#### CLOSING SUBMISSIONS OF THE TENANTS' AGENT:

The landlords' Legal Counsel tries to differentiate, but the 2 options marked in the Notice are clearly not a true intention; both options were available. To now say that the landlord's mother could not move in does not prevent the landlord from choosing the other of the options. The landlords' Legal Counsel argued that the medical condition of the landlord's mother delayed the Visa, but obtained a new passport on March 17, 2023. The Visa application was submitted on September 4, 2023, a 6 month delay. It hasn't been easy for the tenants either, being evicted after 3 years of the tenancy and acted in good faith till the end. The landlords hold 2 properties, and asked the tenants to increase the rent or face eviction.

#### Analysis

Where a tenant makes an application for monetary compensation for the landlord's failure to act in good faith and use the rental unit for the purpose contained in a notice to end a tenancy for landlord's use of property, the onus is on the landlord to establish good faith intent and that the stated purpose was accomplished. The law also states that I may excuse the landlord from paying compensation to the tenant if I find that extenuating circumstances prevented the landlord from accomplishing the stated purpose.

Firstly, I agree with the submission of the landlords' Legal Counsel that the landlords had no obligation to clarify the 2 reasons set out in the Notice to end the tenancy. However, I also accept the submissions of the tenants' agent that having 2 reasons for ending the tenancy leaves it open for the landlords to accomplish at least 1 of the stated reasons, but they didn't.

I accept that the landlord's mother had some medical issues and still does. However, I also consider that the Visa wasn't applied for until September 4, 2023, but the Notice to end the tenancy was issued on November 1 and served on November 21, 2022.

Legal Counsel for the landlords also submitted that the request that the tenants enter into a new tenancy agreement for a year for the same amount of rent is not supported by the evidence. The tenancy agreement intended for the tenants to sign increases the rent from \$2,850.00 per month to \$3,600.00 per month.

I find that since the tenants refused to enter into the new tenancy agreement or sign the Mutual Agreement to End Tenancy the landlords decided to end the tenancy. Instead of moving in, which the landlords clearly could have done, the landlords attempted to re-rent and then to sell.

I am not satisfied that the landlords have established that the medical situation of the landlord's mother prevented the landlords from occupying the rental property, or that extenuating circumstances prevented that.

I find that the tenants are entitled to compensation equivalent to 12 months' rent, or \$34,200.00 (12 x \$2,850.00).

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 grant a monetary order in favour of the tenants as against the landlords in the amount of \$34,300.00. The landlords must be served with the order, which may be filed for enforcement in the Provincial Court of British Columbia, Small Claims division 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 \$34,300.00.

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: January 17, 2024

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Residential Tenancy Branch