



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding TOP VISION REALTY INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Landlord application: MND-S, FF  
Tenant's application: MNETC, FF

### **Introduction**

This hearing convened as the result of two applications for dispute resolution seeking remedy under the *Residential Tenancy Act (Act)*.

On September 26, 2023, the landlord filed for compensation for alleged damage to the rental unit by the tenants, authority to keep the tenants' security deposit and/or pet damage deposit to use against a monetary award, and recovery of the filing fee.

On December 6, 2023, the tenants filed for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) and recovery of the filing fee.

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenants confirmed receipt of the landlord's application for dispute resolution, evidence, and notice of hearing (proceeding package) and additional evidence.

The landlord confirmed receipt of the tenants' application for dispute resolution, evidence, and notice of hearing (proceeding package).

For these reasons, I find each party was sufficiently served the other's proceeding package.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation due to alleged damage by the tenants and to keep the tenants' security deposit and pet damage deposit to partially satisfy a monetary award?

Are the tenants entitled to compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice)?

Is either party entitled to recovery of the filing fee?

Background and Evidence

The evidence was the tenancy began on December 1, 2016 and ended by way of a 2 Month Notice issued to the tenants. The monthly rent at the end of the tenancy was \$3310.89, according to the tenants, and the tenants paid a security deposit and pet damage deposit (deposits) of \$1500 each, both having been retained by the landlord in relation to their application claiming against both.

The tenants said they moved out on September 15, 2023, and that the move-out inspection was on September 16, 2023.

The property management company representing the owner took over representation on or about June 1, 2018, from the original property management company.

**Landlord's application –**

The landlord's monetary claim listed in their application was \$6310.89. To describe the claim, the landlord wrote the following: *Tenant made a lot of damages. The complete list will be provided later.*

The landlord did not provide a breakdown or accounting with their application made on September 26, 2023. On January 30, 2024, the landlord filed evidence, called a statement of loss. In this 21 page document, the landlord provided a partial accounting and breakdown of the claim, for a total amount of "around" \$8492.59. However, even in this claim, the landlord stated that invoices would be provided after purchase to use for the actual amount.

For the reasons set out below, the landlord was informed I would not proceed on their application.

The hearing then continued on the tenants' separate application for monetary compensation from the landlord/owner.

### **Tenants' application**

The tenants' monetary claim is \$39,830.68, which included the filing fee.

The tenants wrote in their application the following:

*The landlord evicted us under the two month notice to end tenancy for the purpose of she herself moving into the home. She signed the eviction in May of 2023. We vacated the home September 15th 2023 and she has not moved in. A women identifying herself as the owner visits the house occasionally to open and close a blind and turn a light on and off to give the false impression she is living there. We are seeking one year rent compensation for the bad faith eviction. \$39,730.68*

The 2 Month Notice filed in evidence shows it was signed by the owner, was dated May 31, 2023, for an effective move-out date of August 31, 2023. The reason for ending the tenancy states that the rental unit will be occupied by the landlord or the landlord's spouse.

The evidence showed the tenants filed an application to dispute the Notice, and the hearing was set for September 28, 2023. However, the tenants elected to cancel the hearing prior to that date and vacated on September 15, 2023.

In response to the tenants' claim, the landlord/owner and agent proceeded first in the hearing.

*The landlord/agent testified as follows, in part:*

The owner is a Canadian, who at the time lived in China, but wanted to return to Canada to live once they finally retired from their job in China. The owner delayed their flight due to the Notice being disputed, and purchased their flight ticket to Canada on September 20, 2023, as shown by the flight itinerary, for a travel date of October 24, 2023. Since that time, the landlord did some renovations and repairs, including painting and decorating, due to the condition of the home, then moved in on November 23, 2023, and has been living there full time since then.

Due to cultural dictates, the owner does not like to buy new things until they are ready for use and they also wanted to air out the property before occupying. The owner stayed with friends for about a month after arriving, had some work done, and then moved in. The owner had tradespersons and contractors around and used friends' references to hire out the work just to get the house ready. There is still more work to be done, but the landlord lives in the property full time.

The owner has a job close to the home and filed documents showing their employer. The other documents submitted were utilities bills and banking information showing the owner's name and the rental unit address. The owner received a package addressed to the tenant, they called their agent, who in turn contacted the tenant to collect the package.

The agent said they were present in the rental unit for the hearing with the owner, their husband and son, and that if the tenants ever came around and introduced themselves, they would see that the owner was living in the property. Instead, the tenants keep coming around and talking to the neighbours and taking photographs.

The owner's husband and son arrived 2 days ago from China and are now living in the property. The reason the owner's son and husband were delayed was because their son could not get registered for school until recently, as the tenants had disputed the Notice.

*Owner's testimony, translated by agent:*

In August 2023, they retired completely in China and they and their husband wanted to raise their child in Canada, as they admire western culture and their human rights records. They also wanted their son to get a good education.

When they saw the state of the house after the tenants vacated, they were disappointed, as everything seemed broken, and they had no choice but to stay with a friend for about a month. During this time, they dealt with tradespersons in order to get the house ready for their husband and son arriving from China.

They were shocked at the prices charged for the work that needed to be done, considering the low quality of the work. After a month, they bought some simple things

and moved in. Work is still being done and all they wanted to do was get the house ready for their family.

They are shocked to see and know that the tenants and neighbours are keeping a watch on them and they do not feel safe in their home now. They are scared to know the tenants keep coming by their house and worried for their child's safety. All they want to do is live in this country and live in their home.

Work done, or planned, was to paint the whole house, redo the roof, railings, garage door, kitchen sink, and bathrooms.

*The tenants testified as follows, in part:*

The owner was not in Canada at the time the Notice was issued. They were upset by getting the Notice, as they had been tenants there for 8 years, and had developed a close community with the neighbours. They relocated within the community and drive by the former rental unit regularly. They have been told by the neighbours that no one is living in the property. The gas bill filed by the landlord does not reflect someone living there full time, as their gas bill was quite a bit higher, confirming that they were a family of 4, with two children. The pay stubs filed by the owner does not prove the owner lives in the property, and they questioned whether the bank documents showed residency.

The landlord's photos were staged to make it look like someone was living there. They denied the home needed that many repairs or renovations and many of the items that supposedly needed fixing or allegedly damaged were issues they raised with a different landlord's agent during the tenancy. However, they were not fixed. They spent thousands of dollars on landscaping.

The neighbours reported that 2 females were coming and going, and only one was staying, in attempts to conceal the owner's residency in the home. There was no food waste, garbage or recycle left at the home, proving no residency.

Tenant, CB, testified that the bills show no one was living in the home full time and the photos do not reflect full time occupancy. The home was livable when they lived there and at the time they left. The information at the hearing was misleading, as the owner said they retired and now have a job in Canada.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

### **Landlord's application**

At the outset of the hearing, the landlord was advised that their application was being refused, pursuant to section 59(5)(c) of the Act because the landlord's application did not provide sufficient particulars of their claim for compensation, as is required by section 59(2)(b) of the Act. Additionally, Rule 2.5 states that the applicant must submit a detailed calculation of any monetary claim being made and copies of all other documentary and digital evidence to be relied on in the proceeding. The applicants are provided with instructions in the application package as to these evidence requirements.

The objective of the Rules is to ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants.

Specifically, the landlords failed to provide a breakdown of the original amount claimed of \$6410.89 at the time the landlords applied, or at any time from the date of their application, until they filed evidence on January 30, 2024, which in fact increased their monetary claim and was an estimate of costs. A monetary claim may not be increased through evidence, as the claim can only be increased by way of an amended application, which then has to be served to the respondents.

I note I am aware the original monetary claim equalled the amount of the security deposit and pet damage deposit plus the monthly rent; however, the landlord still must provide an accounting to at least equal that amount.

For these reasons, I decline to consider the landlord's application. The landlord is at liberty to reapply. This decision does not extend any applicable limitation periods.

I do not grant the landlord recovery of the cost of the filing fee as I have not considered the merits of their application.

As I have refused the landlord's application in which they claimed against the tenants' security deposit, I find the tenants' security deposit and pet damage deposit must be returned. To date, the security deposit and pet damage deposit have accumulated interest in the amount of \$35.17, each.

Pursuant to section 62(3) of the Act, I order the landlord to return the tenants' security deposit and interest of \$1535.17 and pet damage deposit and interest of \$1535.17, immediately, or a total of \$3070.34.

### **Tenants' application**

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In this case, the tenants were served a 2 Month Notice to end the tenancy so the landlord or landlord's spouse intended in good faith to occupy the rental unit. Although the tenants cite this was a case of a bad faith eviction, their lack of good faith argument does not apply to this dispute. The good faith element of a 2 Month Notice is relevant play when a tenant disputes the 2 Month Notice, not in their claim for compensation. Had the tenants wanted to address the landlord's alleged bad faith, they could have done so by continuing on with their dispute of the 2 Month Notice. The issue in this dispute is whether, in this case, the rental unit was used for the stated purpose.

Under Tenancy Policy Guideline 2A, the onus is on the landlord to prove they accomplished the purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months.

12 times the monthly rent - Section 51(2) of the Act applies and states:

Tenant's compensation: section 49 notice

51(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In addition to the above, section 51(3) of the Act states:

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and

(b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The effective date of the 2 Month Notice was August 31, 2023; however, the tenants filed to dispute the Notice, which they had the right to do, but the hearing on their dispute was scheduled for September 28, 2023. Therefore, the owner was unable to move into the rental unit until the tenancy was over. I find it reasonable that the owner could not make travel arrangements until the tenants vacated, or concluded the scheduled hearing, which I find delayed their ability to make travel plans earlier. I take these dates into consideration when deciding a reasonable period of time after the effective date.

Having said that, the landlord's evidence showed the owner made travel plans to Canada from China on September 20, 2023, 4 days after the move-out inspection. I also find it reasonable that after a nearly 8 year tenancy, the landlord would want to make repairs and renovations to suit their needs before moving in their belongings.

In reviewing the evidence, I find the landlord/owner submitted sufficient evidence to show that the landlord moved into the rental unit and began occupying the home within a month or so after flying into the country. The landlord filed documents, which I find proved occupancy for residential purposes. For instance, the landlord produced employment records, a furniture purchase receipt, and bank documents and utilities statements showing the landlord's name and address. Having reviewed the bills, I find that there was enough utilities usage during this time to represent occupancy.

While the tenant submitted the utilities showed much less usage, I do not find it reasonable to compare their usage, a family of four, with a single person's usage. Apart from that, there was no evidence the landlord would consume as much utilities per capita as the tenants, as the landlord may have a different lifestyle/needs than the tenants.



The photos showed furniture, personal items, mementos, wall decorations, a slow cooker, a single toothbrush, lotion, and many other items, which I find on a balance of probabilities show the landlord occupied and lived in the rental unit.

As to the tenants' evidence, I place no weight on what the tenants' termed eyewitness testimony. The evidence was a number of anonymous text messages allegedly from neighbours. I find hearsay evidence bears no weight in these matters, as there is no chance of cross-examination. I also find some of the tenants' own photos proved occupancy by the landlord/owner. One photo was labelled, "empty house photo", but from my review, it appears the tenant went onto the residential property after their tenancy ended to open the landlord's mailbox, and there was mail inside the mailbox.

Another photo was of a front window, with the tenants' caption, "*someone covered front window with a film and added a decoration. This prevents view into the empty house and gives false appearance someone has decorated*". However, in my view, the curtain in the window and decoration show occupancy for residential purposes and I find the tenants' statement does not make sense, that adding decorations give the false appearance of someone decorating. Further, I find the tenants did not have any right to look inside their former landlord's windows.

As I have found that the landlord/owner moved into the rental unit within a month or so after flying into the country, I find this is a reasonable period before moving into the rental unit given the landlord wanted to make some repairs and renovate the property after an 8 year tenancy, and the landlord, newly into the country, would need some time to arrange for contractors/tradespersons and furniture delivery.

Further, there is no evidence to suggest the landlord has advertised the rental unit for sale or rent, and I find the evidence, which included the agent's firsthand testimony, shows the landlord and now husband and son, live in the rental unit, which was the primary purpose.

As of the date of the hearing, I am not able to determine if the landlord has used the rental unit for the stated purpose for 6 months, as the tenants filed their application well before the 6 months expired. However, as of the date of the hearing, I find the evidence gives me no reason to doubt the landlord intends to continue living in the residential property, as I accept that their husband and child moved in 2 days prior to the hearing and the child is enrolled in school.

For the reasons set out above, I find the landlord submitted sufficient evidence to prove on the balance of probabilities that the rental unit was used for the stated purpose, within a reasonable time after the effective date.

I found it was not necessary to consider extenuating circumstances, due to my findings that the rental unit was used for the stated purpose.

As a result, **I dismiss** the tenants' application in full without leave to reapply, as I find the landlord has met the burden of proof to support that they complied with the reason stated on the 2 Month Notice.

### **Other issue**

At the hearing, both parties confirmed that the tenants have not received the amount that is equivalent of one month's rent payable under the tenancy agreement. The amount was offered by the landlord, but the tenants refused the offer. The tenants said this was because they disputed the Notice and believed if they accepted it, it would have been perceived as accepting the end of the tenancy.

Having said that, the landlord's agent acknowledged the tenants are owed this amount, which is \$3310.89. I therefore order the landlord to pay the tenants the amount of \$3310.89.

In consideration of my order that the landlord must return the tenants' security deposit and pet damage deposit, plus interest, of \$3070.34 and the order to pay the tenants \$3310.89, I grant and issue the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount \$6381.23.

Should the landlord fail to pay the tenants this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

### **Conclusion**

The landlord's application is refused for the reasons given, but they are granted leave to reapply for their monetary claim.

The tenants' application for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property is dismissed in full, without leave to reapply.

The landlord has been ordered to return the tenants' security deposit, pet damage deposit, and interest, along with the one month's compensation under section 51(1) of the Act, totalling \$6381.23. The tenants are granted a monetary order in this amount.

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: February 21, 2024

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Residential Tenancy Branch