



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT, MNRL-S, MNDL, FFL

### Introduction

The landlords applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. They ask us for the following orders against their former tenants.

1. Payment of \$350.00 of unpaid utilities [the 'Utilities Claim'].
2. Compensation in the amount of \$12,000.00 for damage done to the rental unit by the tenants [the 'Compensation Claim'].
3. Reimbursement for the \$100.00 filing fee for this application.

The tenants also applied to for Dispute Resolution. They ask us for the following orders against their former landlords.

1. Compensation for 12 months rent in the amount of \$14,616.00 after the landlords failed to comply with their Two-month Notice to End Tenancy for Landlord Use, issued on or about 15 June 2022 [the 'Notice'].
2. Reimbursement for the \$100.00 filing fee for this application.

The landlords appeared at the hearing of their application (and of a cross-application brought by the tenants) on 26 January 2024. The tenants also appeared, along with an advocate.

Note that we refer to the participants in this dispute in the plural form, even though a party may be an individual. We do this in adoption of the BC Public Service Agency's guidelines, 'Words Matter: Guidelines on Using Inclusive Language in the Workplace' [updated 18 May 2018].

### Issues to be Decided

Did the landlords accomplish the purpose for ending the tenancy as stated in their Notice within a reasonable period after the effective date of the Notice?

Were the tenants obliged to pay utilities for the last month of their tenancy?

Did the tenants cause \$12,000.00 worth of damage to the rental unit?

Should either party reimburse the other for the cost of filing their application?

### Background and Evidence

The landlords told us the following about this tenancy and how it ended:

1. the tenants rented the lower residence (for \$1,218.00 per month) in a house owned by the landlords;
2. the landlords discovered the following damage in the unit [the 'Damage']:
  - a. a guest of the tenants had damaged walls in the unit;
  - b. the tenants had smoked in the unit;
  - c. they had damaged a countertop; and
  - d. water had damaged the unit;
3. the landlords wanted to renovate the rental unit as a result of this Damage;
  - a. they told the tenants this, and asked them to move into the upper residence of the house while making these renovations, but the tenants refused;
4. and so the landlords issued the Notice;
5. in drafting the Notice on or about 15 June, the landlords:
  - a. used the form approved by the RTB;
  - b. signed and dated the Notice;
  - c. recorded the address of the rental unit;
  - d. recorded the effective date of the Notice as 1 October 2022; but
  - e. failed to record any basis for the Notice; and
6. the landlords told us that they did not record any basis for the Notice as they had verbally communicated to the tenants that they wanted to end the tenancy to renovate the unit.

The landlords submitted a copy of this Notice. The second page of that Notice, showing the reason for issuing the Notice, has been left blank.

After the tenants moved out in compliance with the Notice, the landlords told us that they spent a little over two months renovating the unit, and then rented it out to new tenants.

The landlords referred us to some copies of receipts and invoices for various materials that they told us they bought in renovating the unit. They could not recall for what some of these receipts actually were. They also said that they hired a painter for \$2,800.00 to paint the unit, but they had no receipt for that work. They submitted no photographs of any of the renovations.

They told us that they did seek any permits for any renovations. And they did not claim to have had an order from the Director of the RTB ending the tenancy for the purpose of making these renovations.

For their part, the tenants told us the following:

1. this rental unit was really old and much of the damage of which the landlords complain existed when the tenants moved in (corroborated with photo's);
2. the tenants noted this damage at the time, and asked the landlords to fix some of it, but they never did;
3. during their tenancy, the pipes burst at least 13 times;
  - a. every time, the tenants notified the landlords and the landlords repeatedly tried to fix them;
4. the tenants smoked in the unit, but the landlords had permitted this;
5. the landlords finally agreed to fix damage done to the unit from water, and wanted the tenants to move into the upper residence for \$1,000.00 more per month in rent;
6. the tenants refused, and in response the landlords issued the Notice not long after, saying that their son and his girlfriend would move into the unit;
7. the copy of the Notice that the landlords submitted is missing the original second page;
  - a. the tenants referred us to their own copy of the Notice, which shows that the landlords recorded as a reason for ending the tenancy as occupancy by the landlords' child or spouse; and

8. after the tenants sought to bring their Compensation Claim, the landlords told them that they would retaliate by advancing their own claim against the tenants in the same amount.

### Analysis

We have considered all the statements made by the parties and the documents to which they referred us during this hearing. And we have considered all the arguments made by the parties.

In writing this decision, we are mindful of the nature and volume of other applications to the RTB for access to limited hearing time. Parties are given an opportunity to participate in a focused and time-limited hearing, and the Director must carefully allocate resources in hearing disputes and writing decisions. As a result of the above, we will provide below only minimal reasons for our decision, sufficient to understand our reasoning.

*Did the landlords accomplish the purpose for ending the tenancy as stated in their Notice within a reasonable period after the effective date of the Notice?*

The parties do not agree on what the basis for this Notice actually was. The tenants say that it was for the landlords' son to move in; and the landlords say that it was for renovations.

Two different copies of the Notice were submitted: one copy cites no reason for ending the tenancy; the other copy cites for occupancy by the landlords' child as the reason. Importantly, however, both copies are of Two-month Notices to End Tenancy for Landlord's Use. Even though the landlords' copy has no reason specified, we note that the reason that they allege, *i.e.* to renovate the unit, is impermissible under a Two-month Notice. The only way a tenancy can end for renovations is by order of the Director *per* section 49.2 of the *Residential Tenancy Act* [the 'Act']. And the landlords did not allege that the Director made any such order.

And so we find the fact that the landlords issued a Two-month Notice to be consistent with the tenants' statements (and their copy of the Notice) that the landlords wanted to end this tenancy so that their son and his girlfriend could move into the unit.

But the landlords concede that this did not happen: they told us that, instead, they spent a couple of months renovating the unit, and then rented it out to new tenants. This clearly was a failure to ever accomplish the stated purpose of the Notice.

Accordingly, we must grant the Compensation Claim for 12 months of rent in the amount of \$1,218.00, which we accept totals \$14,616.00.

*Were the tenants obliged to pay utilities for the last month of their tenancy?*

The landlords bear the burden of proving their claim on a balance of probabilities, and the tenants deny this claim. In support of their Utilities Claim, the landlords submitted a copy of a utilities bill that postdated the end of the tenancy (*i.e.* for October and November). They did not direct us to a tenancy agreement that showed the tenants agreed to pay utilities. In sum, the landlords have simply failed to prove their Utilities Claim. We dismiss it without leave to reapply.

*Did the tenants cause \$12,000.00 worth of damage to the rental unit?*

Again, the burden to prove the Damage Claim is the landlords' burden. They directed us to some records of damage, and some receipts for materials that they claim they had to buy to repair damage done by the tenants. But these documents were largely disorganized and the landlords could not even recall what some of them showed. They certainly never calculated for us how these disparate materials and some labour amounted to \$12,000.00.

We directed the landlords to make a list of their documents, summarising what each showed, to better aid them in presenting their case. But the landlords failed to do this. And we cautioned them that failure to do so may result in us declining to consider them.

They submitted some photo's of damage, but the tenants also submitted photo's of damage that they said existed from when they moved in.

Again, the landlords bear the burden to make out this claim on a balance of probabilities: did the tenants probably cause damage that entailed all the renovations the landlords made?

In face of the tenants' denial that they damaged the unit, the landlords needed to provide compelling evidence that the tenants had indeed damaged the unit. But the landlords, through the haphazard and ineffective presentation of their case, ultimately failed to offer such compelling or convincing evidence.

We find it equally probable that the unit was in a state of disrepair from the beginning (and as a result of ineffective repairs made by the landlords during the tenancy), as it is probable that the tenants had caused this damage. And so the landlords' Damage Claim cannot succeed.

Indeed, we find the scope of these renovations, and the context in which they were made, more consistent with a landlord seeking to get tenants out to renovate the unit and then rent it out to new tenants. And this is, by the landlords' admission, what in fact occurred: they issued the Notice; the tenants complied with it; the landlords then renovated the unit; and now they are renting it to new tenants.

*Should either party reimburse the other for the cost of filing their application?*

The tenant succeeded in their application, and so we find it suitable that the landlords reimburse them for the cost of filing their application. As the landlords failed in their application, they shall bear the cost of filing it.

Conclusion

We order that the landlords pay to the tenants \$14,716.00 per section 51 (2) of the Act.

The tenants must serve this order on the landlords as soon as possible. If the landlords do not comply with our order, then the tenants may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the tenants can enforce our order as an order of that court.

We dismiss the landlords' application in its' entirety, without leave to reapply.

We make this decision on authority delegated to us by the Director of the RTB *per* section 9.1(1) of the Act; and on the traditional and unceded territory of the lək'wəŋən speaking peoples, known today as the Esquimalt and Songhees Nations.

Dated: 7 February 2024

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Residential Tenancy Branch