



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      MNETC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking monetary compensation from the landlord purchaser because the tenancy ended as a result of notice to end the tenancy for landlord's use of property, and the landlord purchaser has not complied with the *Residential Tenancy Act* or used the rental unit for the stated purpose.

The hearing did not conclude during the first scheduled hearing date, and I adjourned it to continue. My Interim Decision was provided to the parties after the 1<sup>st</sup> scheduled date.

Both tenants and the landlord attended on the 1<sup>st</sup> scheduled date, and one of the tenants attended on the 2<sup>nd</sup> scheduled date. The landlord was represented at the hearing on both dates by an agent. The landlord's agent and one of the tenants gave affirmed testimony, and the landlord's agent called 2 witnesses who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses, and to give submissions.

Both parties have provided evidentiary material, and although the landlord did not agree that all of the tenant's evidence was received, I made a finding that all of the tenants' evidence has been served in accordance with the law. However, my Interim Decision states that the landlord had sufficient time to serve the tenants with the landlord's evidence, but failed to do so, and I declined to consider any of the landlord's evidence.

At the conclusion of the hearing the tenant submitted that the tenant received the landlord's evidence by email on January 28, 2024, which was after the date of my Interim Decision.

The parties also disagreed to the date and method of service of the Notice of Dispute Resolution Proceeding and other required documents. The tenants filed the Application

for Dispute Resolution on October 26, 2023 and received the documents to serve on the landlord on October 27, 2023. An applicant is required to serve the respondent within 3 days of receiving the documents from the Residential Tenancy Branch. The tenant has provided proof of serving the landlord at the address for service of the purchaser of the rental home on October 28, 2023, and testified that the documents were signed for by someone at that address, and 14 days later someone wrote "moved" on the package and returned it. The tenant has also provided evidence of re-sending the package on December 4, 2023. The law states that if served by registered mail, the package is served 5 days later, and I find that the tenants have complied with the *Act*.

### Issue(s) to be Decided

Has the landlord established that the landlord has acted in good faith and used the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property?

### Background and Evidence

**The landlord's agent** testified that the landlord purchased the rental property on March 10, 2022 while the tenants resided there. The tenants moved out before March 10, 2022. The landlord's agent does not know when the tenancy began or how much the rent was or any information about a security deposit or pet damage deposit. The rental unit is a detached house.

The tenant was served with a Two Month Notice to End Tenancy For Landlord's Use of Property, a portion of which has been provided for this hearing by the tenants. The reason for issuing it states: All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give his Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The landlord moved into the rental home on March 12, 2022 and a new tenant lives there now, effective September 16, 2022 for rent in the amount of \$3,000.00 per month. The landlord resided on the property, but it was not in good condition and untidy. The landlord decided to renovate but had to move his family to a neighbour's house across the street after a few days, due to allergies or another illness in the landlord's baby, perhaps from pet hair. The landlord remained in the rental unit.

During questioning by the tenants, the landlord's agent testified that the landlord completely gutted the inside of the rental home, and a building inspector gave an order

for no more work at the end of May due to having no permits. Only minor renovations were done including paint, flooring and drywall, and the sink and bathtub leaked so it had to be repaired. Referring to the photographs provided for this hearing by the tenant, the landlord's agent testified that the landlord was basically living there, or staying there while the family stayed at a neighbour's home, and was doing the renovations himself. The landlord moved in on March 12, 2022, stayed until September 15, 2022 and then rented on September 16, 2022.

The landlord's agent also testified that, although it has nothing to do with the rental unit, the landlord has also turned the carport into a bachelor suite which has been rented since June 1, 2023 for \$800.00 per month, and is still occupied by that tenant.

**The landlord's first witness** (MS) testified that the landlord moved from his previous residence on March 12, 2022. The witness lives at that residence.

**The landlord's second witness** (BS) testified that the landlord moved to the rental home with his wife and kids on March 12, 2022. The witness is a neighbour across the street from the rental address. After 5 days the landlord's wife and son lived that the witness' house for 4 to 5 months.

**The tenant** (RJS) testified that in 2020 the tenant was hospitalized for 60 days, and the tenant's wife moved the tenants into the rental unit on a 1 year lease. The tenancy ended at the end of February, 2022. Rent was \$2,050.00 per month, payable on the 1<sup>st</sup> day of each month and there are no rental arrears. The rental unit is a single family home.

The tenant further testified that the landlord never lived a day in the house after purchasing it. The photographs submitted by the tenants were taken on April 7, 2022 which show it was gutted, so no one lived in it.

The notice to end the tenancy was for the purchaser to occupy the rental unit, not to conduct renovations; for that the landlord would have to give a 4-Months Notice.

The tenants continued to monitor the rental home. As of the end of May, 2022 the City came and shut the house down, not occupiable due to no permits. There was also a For Rent sign in front of the house, and the phone number belongs to someone in Manitoba, who the tenant called. The house was advertised for rent in August, so the landlord could not have lived there until September 15. The person who answered the phone is the landlord's nephew who said that the house was currently available, and to text some information and he'd get the landlord to call, but he never did. The person who lives there now answered the door and told the tenant that the carport is a bachelor

suite, not an extra bedroom. The current tenant said that they were looking for a new place, and had moved in on September 1, 2022.

The tenant was also invited in by workers who asked the tenant to rent it. The bathroom was gone; no drywall, and the fireplace was gone. The people working showed the tenant the work they were doing and asked if the tenant and wife would be interested in renting for \$3,000.00. The For Rent sign went up 4 months after the purchase date.

#### SUBMISSIONS OF THE LANDLORD'S AGENT:

The rental home was re-rented after September 15, 2022. The City gave notice to stop work only, so a person is allowed to live in it. The landlord was a first-time buyer and didn't know much. The landlord has lived in the rental home and has satisfied the conditions, but had a problem with a small child's health. On March 12, 2022 the landlord moved into the rental property, renovating himself while working part-time. He worked at night and did renovations in the daytime, doing most of the work himself. The landlord's wife and child stayed with a neighbour.

#### SUBMISSIONS OF THE TENANT:

The landlord never lived in the house. The City said he couldn't renovate, but he did anyway and rented it out. The phone number on the For Rent sign belongs to a family member in Manitoba. The tenants have also talked to neighbours, whom the tenants know. When the tenant went there to see if there was mail, neighbours said all they saw was work going on inside and outside of that house.

#### Analysis

Where a tenant seeks monetary compensation for the landlord's failure to comply with the *Residential Tenancy Act*, by acting in good faith and using the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice), commencing within a reasonable time after the effective date of the Notice and for at least 6 months duration, the onus is on the landlord to establish that the landlord did comply with the *Act*, with no ulterior motive. The law also states that if the landlord fails to establish that good faith intent or use the rental unit for the stated purpose, the landlord must pay the tenant compensation equal to 12 times the monthly rent. The same law applies to a purchaser who has asked the landlord to give the Notice.

The *Act* also states that I may excuse the landlord, or the purchaser, from paying the compensation to the tenant if the landlord establishes that extenuating circumstances prevented the landlord from accomplishing the stated purpose.

In this case, I accept the undisputed testimony of the tenant that the Notice was effective on February 1, 2022. The landlord's agent testified that the landlord and his family moved into the rental home on March 12, 2022; after 3 or 4 or 5 days the landlord's wife and child stayed across the street; the landlord made minor renovations to the single family home, and stayed there for almost exactly 6 months, then re-rented the rental unit for \$3,000.00 per month, and added a bachelor suite for rent at \$800.00 per month. I do not find that believable. If it were the case, the landlord ought to have finished the "minor renovations" sooner and moved in.

I have reviewed all of the evidence provided by the tenants, including photographs, and I do not accept that the landlord could have resided there for 6 months.

I find that the landlord has not established any extenuating circumstances for not accomplishing the stated purpose, but had no intention of living in the rental unit, considering that the landlord now earns \$3,800.00 per month for property that the tenants rented for much less.

I find that the tenants are entitled to compensation of 12 times the monthly rent of \$2,050.00, or \$24,600.00 as claimed, and I grant a monetary order in favour of the tenants as against the landlord in that amount. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced 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 landlord purchaser pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$24,600.00. 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: February 5, 2024

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Residential Tenancy Branch