



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding SUTTON GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking monetary compensation from the landlords for the landlords' failure to accomplish the stated purpose for ending the tenancy with a Two Month Notice to End Tenancy For Landlord's Use of Property, and to recover the filing fee from the landlords for the cost of the application.

Both named tenants and both named individual landlords attended the hearing, who also represented the landlord company. One of the landlords and both tenants gave affirmed testimony.

The hearing was originally scheduled to convene on September 5, 2024, however due to improper exchange of evidence. On that date, the parties agreed that all evidence could be provided to each other by email. My Interim Decision was provided to the parties after the first scheduled hearing date, which also ordered that no new evidence will be accepted by either party, and the hearing would reconvene on October 16, 2024.

On October 16, 2024, one of the landlords (HPJP) indicated that not all of the tenants' evidentiary material was received by the landlords, or was different, incomplete or didn't match, and that the landlords did not receive any evidence from the tenants in July, 2024. The tenants have provided copies of emails to the landlords which indicates that the documents were served by email on July 27, 2024 with 4 attachments.

The documents required to be served include: Notice of Dispute Resolution Proceeding; Application for Dispute Resolution, Respondent's Instructions, any fact sheets provided by the Residential Tenancy Branch and evidence. Any evidence that a party wishes to rely on must be provided to the other party even if they already have a copy because it is important for all parties to know what is before me. The tenants'

evidence contains more than 4 documents, and I am not satisfied that the tenants have provided the landlords with the evidence. Therefore, I decline to consider the tenants' evidentiary material.

At the commencement of the first scheduled date the tenants acknowledged receiving the landlords' evidence by email and accepted that. As a result, all of the landlords' evidence has been reviewed and is considered in this Decision.

#### Issue(s) to be Decided

- Have the landlords established that the stated purpose for ending the tenancy with a Two Month Notice to End Tenancy For Landlord's Use of Property was accomplished within a reasonable time after the effective date of vacancy, or have the landlords established that extenuating circumstances prevented that?
- Should the tenants recover the filing fee from the landlord?

#### Background and Evidence

**The landlord** (HPJP) is the son of the landlord named in the tenancy agreement (WP), who acted as agent for the landlord, and is hereafter referred to as the landlord's agent. The landlord's agent testified that this fixed-term tenancy began on October 1, 2016 and expired on March 31, 2018 and ended on January 31, 2024. Rent in the amount of \$2,200.00 was payable on the 1<sup>st</sup> day of each month. On September 11, 2016 the landlords collected a security deposit from the tenants in the amount of \$1,100.00, and the tenants used that for rent for January, 2024. The rental unit is a single family house.

The tenants were served with a Two Month Notice to End Tenancy For Landlord's Use of Property, dated July 19, 2023 and containing an effective date of vacancy of September 30, 2023. The reason for issuing it specified that the landlord or the landlord's spouse would be occupying the rental unit. However, the tenants didn't move out until January 31, 2024.

No one has occupied the rental home since the tenants vacated, due to a series of events.

The landlord's daughter lived overseas, and her husband works in another Province. It was overwhelming for the landlord's daughter, who has 2 kids. In December the landlord, after waiting to move into the house, thought he wouldn't be able to move in right away and went overseas to take care of family issues. The landlord's daughter gave birth in January, 2024 and the landlord's mother-in-law became critically ill and

passed away on May 17, 2024. The landlord's daughter wanted to have both parents take care of her children and wanted to live with her parents, and the parents agreed. They looked at living in B.C. in the rental home or in Toronto, however the rental home was not big enough for 6 people and was not in good condition so the landlord decided to sell. The landlord returned to Canada on June 1, 2024 and the home was listed in early June, 2024. The landlord wanted to retire in the rental house, and purchased a cot so he could stay there when he arrived in B.C., not knowing when his daughter would be approved to move to Canada.

**The first tenant** (AEJ) testified that the landlord had the right to end the tenancy to occupy it, but didn't do that and put the tenants in a critical situation. The tenants asked the landlord to allow the tenants to stay till the end of May, but the landlord didn't accept that saying he would move in right away.

The tenants received the Notice in July and disputed it. The hearing was at the end of December, 2023 or beginning of January, 2024.

**The second tenant** (AH) testified that there were 6 people living in the rental unit, the tenants and 4 kids, from 2016 until the tenants left in January, 2024.

Both tenants had to quit their jobs, and the tenants and kids have suffered. The tenants were not able to afford the move. Items had to be given away because the tenants had no place to move to, and had to move to Ontario at the end of January, and the new landlord needed a full year of rent and the tenants had to borrow money from family. The tenants' children had to repeat a year of school.

The tenants lived in the rental home for more than 7 years. The tenants asked to stay until the end of the school year, but the relator said the landlord wouldn't agree and the tenants had to move out.

#### SUBMISSIONS OF THE LANDLORD:

A series of things that happened lead the landlord to decide to sell the house. The Notice was given in July, 2023 and the tenants wanted to stay till the end of May, which the landlord did not agree. The tenants' claim is \$29,700.00 and 12 months rent would be \$26,400.00.

#### SUBMISSIONS OF THE TENANTS:

Once the tenants received the Notice, the tenants started a search for a new rental with the help of the real estate agent. Either the tenants weren't accepted because they are a family of 6 or there was only 1 bedroom. Prices were too high, which is why the tenants tried to stay till summer. The tenants offered to increase the rent, but the

landlord said, “No, I need my home.” The tenants borrowed money because they had no rental history in Ontario. Then the tenants found that the landlord didn’t move in, but listed the home for sale.

### Analysis

Where a tenant makes an application for monetary compensation from the landlord for the landlord’s failure to accomplish the stated purpose for ending a tenancy with a Two Month Notice to End Tenancy For Landlord’s Use of Property (the Notice), the onus is on the landlord to establish that the landlord did accomplish that stated purpose within a reasonable time after the effective date of the Notice. If the landlord does not establish that, the landlord must compensate the tenant 12 times the monthly rent. However, the *Residential Tenancy Act* also states that I may excuse the landlord from paying the compensation if, in my opinion, extenuating circumstances prevented the landlord from accomplishing that stated purpose.

In this case, the Notice was effective July 19, 2023, however the tenants disputed it, and the tenant testified that the hearing was at the end of December, 2023 or early January, 2024. The tenants vacated the rental unit at the end of January, 2024.

The landlord’s agent testified that his sister gave birth in January, 2024 and the landlord’s grandmother became critically ill and passed away on May 17, 2024. He also testified that the sister wanted her parents to take care of the children, and they agreed, but the landlord had no idea when the sister would be approved to move to B.C.

The landlord did not move into the rental unit, but the landlord found that the house was not big enough for 6 people and was not in good condition so the landlord decided to sell the rental home. I find that the landlord ought to have known that prior to issuing the Notice.

Although I accept that the landlord was attempting to assist his daughter, and that the landlord’s parent passed away on May 17, 2024, I do not find that extenuating circumstances exist that prevented the landlord from occupying the rental home.

The tenants had been paying \$2,200.00 per month for rent, and I find that the tenants are entitled to compensation in the amount of 12 times the monthly rent, or \$26,400.00.

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

The tenants' application names 3 landlords: the landlord named in the tenancy agreement (WP) and the landlord's son (HPJP) and the real estate company. The *Act* states that an agent of the landlord is also a landlord, which includes HPJP, but does not include the real estate company; a property manager has no control over what a landlord does with a rental unit after a tenancy ends. Therefore, I find that the tenants are entitled to monetary compensation from the landlord named in the tenancy agreement (WP) and the landlord's son (HPJP), who has acted as agent for the landlord.

The landlords 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 landlords (WP) and (HPJP) in the amount of \$26,500.00.

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: October 21, 2024

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Residential Tenancy Branch