



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenants' application: CNL, MNDC, MNSD, PSF, RP, RR, FF

Landlord's application: OPL,

### **Introduction**

This was a hearing with respect to applications by the tenants and by the landlord. The tenants applied to cancel a two month Notice to End Tenancy for landlord's use. They also applied for a monetary award, including the return of security and pet deposits and for a repair order, an order that the landlord provide services or facilities and for a rent reduction.

### **Issue(s) to be Decided**

Should the Notice to End Tenancy for landlord's use be cancelled?

Is the landlord entitled to an order of possession pursuant to the Notice to End Tenancy?

Should the tenants be granted a monetary award?

Should the tenants be granted other relief, including a repair order, a rent reduction or an order directing the landlord to provide services or facilities?

### **Background and Evidence**

The rental property is a house in Delta. The rental unit is a basement suite in the house. The tenancy began May 1, 2015. The monthly rent is \$1,075.00. The tenants paid a security deposit of \$540.00 and a pet deposit of \$100.00 before the tenancy began. There is a dispute about the terms of the tenancy agreement. The tenants said that wireless internet access and exclusive use of the backyard was included in the rent. The tenant said that he was not given a tenancy agreement to sign when the tenancy began. He said that the landlord did not give them a tenancy agreement until a year after the tenancy started. The tenant said he did not sign the agreement because it did

not accurately record the terms of the agreement with respect to internet access or use of the back yard.

The landlord said that the tenancy agreement was placed in the tenants' mailbox in May, 2015, but it was never signed and never returned to the landlord.

The landlord testified that on July 4, 2016 she personally served the tenants with a two month Notice to End Tenancy for landlord's use. The Notice to End Tenancy was dated June 26, 2016 and it stated that the tenants must move out of the rental unit by September 4, 2016. The move-out date of October 31, 2016 had been crossed out on the form and replaced with the earlier date. The stated reason for the Notice to End Tenancy is that the rental unit will be occupied by the landlord or the landlord's close family member.

The landlord said that her husband's health problems are a major factor in their decision to occupy the rental unit. The landlord's submitted medical records with respect to her husband's health and her son's allergy condition. The landlord's husband, who is a joint owner of the rental property and named on the tenancy agreement has had open heart surgery in November, 2015. He also suffers from type 2 diabetes. The landlord said that he needs to use a wheel chair because he has problems with his leg as a result of a surgical procedure to the vein as part of the heart surgery procedure. The landlord said that he is undergoing rehabilitation and is engaged in a graduated return to work. The landlord testified that she also is employed and performs shift work. The landlord intends to use the basement for her husband and son to occupy because it has wheel chair access and because she and her husband's different work schedules require them to have separate sleeping quarters. The landlord said that the hostile relations with the tenants are also affecting her husband's health. He cannot tolerate the stress of participating in this proceeding and this is also one of the reasons why the landlord's need to end the tenancy and resume occupancy of the rental unit. The landlord said that they need additional space for visiting family and this is a further reason why they have decided to permanently occupy the rental unit and cease to have tenants.

The tenant said that the landlord made several efforts to get the tenants to move before serving the Notice to End Tenancy. He said that on May 8<sup>th</sup> the landlord asked them to move because of problems with the heating system in the house. He said that the landlord told them on June 7<sup>th</sup> that they were looking for a townhouse to buy and said they should start looking for another house. He said that the landlord then gave the tenants a copy of a tenancy agreement and asked them to sign. He said that she also mentioned raising the rent.

The tenant said that the Notice to End Tenancy was only given to the tenants after the City of Delta conducted a house inspection and gave the landlord a list of necessary repairs. The tenant denied that the landlord's husband needs a wheelchair or that there is any concern that her son is allergic to the tenants' pets. The tenant testified that the landlord has deprived them of heat by turning off the furnace and has cut off their internet access. The tenant said that the landlord wants to evict them in order to avoid performing repairs and because his girlfriend is home on maternity leave with a new born child and the landlord objects to having her home all day, rather than at work full-time.

The tenant said that the loss of internet access has affected his business, which according to the tenant includes selling items via the internet.

The tenant said the landlords have been harassing the tenants and have made a number of false police reports, according to him, in order to build a case for evicting the tenants. The tenant submitted copies of redacted police reports obtained through a freedom of information request. The reports referred to complaints to the police made by both the landlord and by the tenants. The reports mentioned that: "Both parties are going through a lengthy eviction process where both parties are calling Police to generate reports on one another."

The tenant said the landlords are responsible for generating the police reports and have accused the tenants of turning off the power to the landlord's portion of the house, when the power outage was due to a tripped circuit breaker. The tenant said the police suggested to him that the landlords were trying to build a case against him.

The tenants requested that the Corporation of Delta inspect the rental unit for deficiencies. Employees of the Corporation of Delta inspected the rental unit on June 29, 2016. The Delta Property Use & Compliance Division sent the landlords a letter dated July 4, 2016. The letter mentioned several deficiencies that needed to be corrected, including a seal on the oven door, a manual furnace relay that should be interconnected to detectors, an electrical inspection due to concerns about burn marks on an electrical outlet, a lifting piece of laminate flooring, a permanent step to a window, an issue with a fridge compressor said to be operating poorly, a laundry drain problem and failure to provide parking in the driveway.

The tenants sent a letter to the landlord dated June 17, 2016 requesting repairs to the rental unit. The tenant said the repairs were discussed with the landlord in August, 2015 during a walkthrough of the rental unit.

The tenants claimed that they have been deprived of heat during the tenancy; they requested compensation in the amount of \$3,327.50 for the absence of heat for five months.

### Analysis

There have been ongoing disputes between the landlord and the tenants over the course of the tenancy. The tenants contend that the landlord has given the two month Notice to End Tenancy in retaliation to the tenants' requests for repairs. They maintain that the health problems of the landlord and her husband are not legitimate reasons for ending the tenancy and they refer to the numerous police reports from the Delta Police Department. They also allege that the landlord has verbally given other reasons for seeking to end the tenancy and said that they intend to sell the house.

The landlord testified that the repairs requested by the tenant have been addressed for the most part and this did not play a part in the decision to end the tenancy. The health of the tenant's husband and the stress of dealing with the tenants has affected the health of both the landlord and her husband. I accept the landlord's testimony that she and her husband want to have the house for their own use and no longer want the stress of dealing with tenants and I find that the decision to end the tenancy was motivated by the landlord's health concerns and by their desire to have the rental unit for their own use. I find that the rental unit will be occupied by the landlord and the landlord's close family members and that the Notice to End Tenancy was validly given. I therefore dismiss the tenants' application to cancel the Notice to End Tenancy. The Notice to End Tenancy stated an effective end of tenancy date of October 3, 2016. This date was crossed out and September 4, written in its place. I find that the Notice to End Tenancy should operate to end the tenancy effective October 31, 2016 and I grant the landlord an order of possession effective that date. This order may be filed in the Supreme Court and enforced as an order of that court.

Because the tenancy is ending, I make no orders for repairs, for a rent reduction or for an order that the landlord provide services or facilities. I make no finding as to whether or not internet service was included in the rent. The tenants requested the return of their security deposit. The security deposit and pet deposit will be dealt with at the end of the tenancy in accordance with the provisions of the *Residential Tenancy Act*.

The tenants claimed a monetary award for loss of an essential service, namely: heat. The communications between the tenants and the landlord do not support the contention that the tenants were deprived of heat for five months. To support the tenants claim that they were being deprived of an essential service it was incumbent

upon them to make a timely claim on this account. The tenants did not pursue such a claim until they applied for dispute resolution on July 5, 2016 to cancel the two month Notice to End Tenancy. I am not satisfied on a balance of probabilities that the tenants were deprived of heat and I dismiss the tenants' claim for loss of heat without leave to reapply.

### Conclusion

The tenant's application including the application to cancel the Notice to End Tenancy has been dismissed without leave to reapply. The landlord's application for an order of possession has been allowed. The order of possession will be effective October 31, 2016. The landlord did not request a filing fee and I make no order with respect to a filing for the landlord's application.

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 3, 2016

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Residential Tenancy Branch