



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT MNDCT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. No issues with respect to service or delivery of documents or evidence were raised and all evidence relevant to the application has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation due to the landlord's failure to use 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 first tenant** (APH) testified that this month-to-month tenancy began on September 1, 2016 and ended on July 1, 2018. Rent in the amount of \$2,500.00 per month was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$2,500.00 which was partially meant to be a pet damage deposit. The entire deposit was returned to the tenants at the end of the tenancy.

A copy of the tenancy agreement has been provided as evidence for this hearing. The rental unit is the upper 2 floors of a 2-story heritage home as well as part of the basement, and another tenant occupies the rest of the basement in a self-contained suite. The landlord does not reside on the property.

The landlord gave the tenants a note dated May 1, 2018 stating that they had to move out of the rental unit by July 1, 2018, and a copy has been provided for this hearing. The tenant asked the landlord to give a proper notice to end the tenancy and the landlord asked where to get one.

The landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property, and copies of the first 2 of a 3-page notice have been provided as evidence for this hearing. The Notice is dated May 22, 2018 and contains an effective date of vacancy of July 1, 2018. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)."

The landlord did not evict the tenants in good faith. First the landlord said that the City wouldn't allow the rental unit to be rented due to wiring problems, which was false. The tenant has a friend who is an electrician and told the tenant that the house was grandfathered due to its age.

About a week before July 1, 2018 the landlord told the tenants that they didn't have to move out, but the tenants had already signed a new lease for a new rental unit and had almost completely moved out by that point.

The house was completely empty for about 6 months. The tenants went there to collect mail that wasn't forwarded to their new home. After that period a new tenant moved in who was not a family member of the landlord. The new tenant placed an advertisement seeking roommates, and a copy of the advertisement has been provided for this hearing. The tenant in the basement suite told the tenant that the new tenant did some drywall work in the rental unit and ended up renting the property.

**The second tenant** (BW) testified that she had to go to the rental unit after moving out for mail that wasn't being forwarded to the new rental unit. The tenant was expecting a parcel, and a parcel tracker said it had been delivered but nothing was at their new address. The tenant believed it may have been sent to the previous rental unit so attended to see if it was delivered. A new tenant answered the door, and told the tenant that he was working and living in the house. The tracking receipt shows a date of June, 2019, which is the approximate date that the tenant spoke to the occupant.

The tenant further testified that she spoke to the tenant in the basement suite, who the tenants continue to have a friendly relationship with. He told the tenant that a fellow he works with lives in the rental unit. The tenant could see each time that she drives by that it was empty for about 6 months, and the person residing there now is neither a landlord nor a family member, but a co-worker of the tenant who resides in the basement suite.

**The landlord** testified that he gave the Two Month Notice to End Tenancy for Landlord's Use of Property because he was getting married and needed the space for his folks and extended family. Rather than putting them in hotels the landlord decided to use the space to save money. They were not staying there other than to sleep there because the landlord could not keep everyone in the landlord's home. Some of the family members arrived in August and some in September, 2018 and the wedding was on October 6, 2018. The guests stayed for just a couple of months, probably from August to November, 2018.

The landlord denies telling the tenants that they didn't have to move out prior to the effective date of the Notice. He also gave the tenant in the basement suite a notice to end that tenancy and told them they might not have to move out. It turned out that the landlord didn't need that space and that tenant still resides in the basement suite.

After the wedding the landlord had some electrical work done in the rental unit so there were holes in the walls and other repairs. The tenant in the basement suite told the landlord he had a friend wanting to move in but the rental unit wasn't livable at that point. Eventually, the landlord agreed to allow him to stay and he gave the landlord a security deposit in January or February after all guests had gone home. He was not a good tenant and was trying to fix up the rental unit to sublet and make money, which the landlord did not know about. He made agreements with a number of people saying he was the landlord, but didn't even pay his rent. The landlord gave him a notice to end his tenancy and a restraining order was put in place. Since the sub-tenants didn't do anything wrong, the landlord allowed the sub-tenants to stay who had been occupying it since August, 2019. No family members are currently occupying the rental unit.

### Analysis

Where a landlord issues a Two Month Notice to End Tenancy for Landlord's Use of Property, it must be issued in good faith. If the landlord doesn't use the rental unit for the purpose contained in the Notice within a reasonable time after the tenancy ends and continue to use it for that purpose for at least 6 months, the landlord must compensate

the tenants the equivalent of 12 months rent according to Section 51(2) of the *Residential Tenancy Act*.

In this case, the landlord believes he didn't do anything wrong, but agrees that the rental unit was only used by family members as a place to stay during the wedding period. That is not lawful. The landlord and the tenant had a contract and the landlord cannot cancel that contract to use the rental unit as a hotel for temporary use. I also refer to Residential Tenancy Policy Guideline #2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, which sets out the requirement in very clear terms: "The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2)."

I find that the tenant has established a claim of \$30,000.00, being 12 times the monthly rent payable under the tenancy agreement at the time that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$30,100.00.

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: December 17, 2019

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Residential Tenancy Branch