



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNETC

### Introduction

This hearing was scheduled to convene at 1:30 p.m. on December 6, 2022 by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and compensation for the landlords' failure to use the rental unit for the purpose stated in a Two Month Notice to End Tenancy for Landlord's Use of Property.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlords joined the call.

The tenant testified that the landlords were individually served with the hearing packages which included the Notice of Dispute Resolution Proceeding by registered mail on September 2, 2022 and has provided 2 Registered Domestic Customer Receipts addressed to each of the landlords, as well as a Canada Post cash register receipt bearing that date. I am satisfied that both landlords have been served in accordance with the *Residential Tenancy Act*.

The tenant also advised that the digital evidence was not provided to the landlords, but all other evidence was, including screenshots. Any evidence that a party wishes to rely on must be provided to the other party. Since the digital evidence was not provided to the landlords, I decline to consider it. All other evidence of the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established that monetary compensation is due to the tenant for the landlords' failure to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property?
- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and specifically for overpayment of rent?

Background and Evidence

The tenant testified that this month-to-month tenancy began at the end of 2018; the rent was pre-paid for November, 2018 and the tenant moved in on December 5, 2018. The tenant vacated the rental unit at the end of April, 2022. There is no written tenancy agreement, however rent in the amount of \$550.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. The rental unit is a townhouse, or duplex, which is attached to another house, and the landlords did not reside on the property during the tenancy.

On March 18, 2022 the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property by registered mail, and a copy has been provided for this hearing. It is dated January 31, 2022 and contains an effective date of vacancy of May 31, 2022. 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), specifying the landlord or the landlord's spouse. Also provided is a letter from the landlords to the tenant indicating that the landlords intend to move into the rental unit to complete repairs and proceed with selling another property.

The tenant further testified that the tenant has gone to the house, and the landlords are family members of the tenant. The tenant also spoke with the neighbour in the attached unit. No one has moved in. The tenant also asked the tenant's grandmother and the landlord's son, and no one knows why the landlords didn't move in. Copies of text messages exchanged between the tenant and neighbour have been provided for this hearing, as well as photographs of the rental home.

The landlords changed the Shelter Information document to increase rent to \$650.00 per month, which was an overpayment of \$100.00 for each of the months of February, 2019 through April, 2022, which is 37 months, or \$3,700.00. The tenant has provided a Monetary Order Worksheet which shows claims of \$650.00 per month for the months of

April, 2019 to the end of April, 2022. A copy of the Shelter Information form has also been provided for this hearing, which shows that the "Total Rent" amount has been changed to \$650.00. It appears to be signed by a landlord (PK) on February 11, 2019.

### Analysis

Firstly, the *Residential Tenancy Act* specifies that a tenancy agreement exists by virtue of the tenant paying rent to the landlord, even if it is not in writing. I accept the undisputed testimony of the tenant that rent was \$550.00 per month at the beginning of the tenancy and the tenant has provided bank statements to establish that. The evidence also shows that once the tenant started to receive income assistance, the landlord changed the Shelter Information document to show that \$650.00 is payable per month. That is contrary to the law; a landlord may only increase rent in accordance with the *Act* and in the amounts set out in the regulations. There is no evidence to suggest that the landlords increased the rent in accordance with the law, and I find that rent was \$550.00 per month, and the tenant has established a claim for overpayment of rent in the amount of \$100.00 per month from April 1, 2019 through February, 2022, for a total of 34 months, or \$3,400.00.

Where a tenant makes a claim for the landlords' failure to use a rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property, the onus is on the landlords to establish that the stated purpose was accomplished within a reasonable time after the effective date of the Notice. I accept the undisputed testimony of the tenant that no one has moved into the rental unit, and I have no reason to believe otherwise. Where a landlord fails to do so, the landlord must be ordered to pay 12 times the monthly rent to the tenant. Having found that the rental amount was \$550.00 per month, and having found that the tenant is entitled to recovery of the overpayments, I order that the landlords pay compensation to the tenant in the amount of \$6,600.00 ( $\$550.00 \times 12 = \$6,600.00$ ).

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

I grant a monetary order in favour of the tenant as against the landlords in the amount of \$10,100.00 (\$3,400.00 overpayment of rent + \$6,600.00 for 12 times the monthly rent of \$550.00 + \$100.00 recovery of the filing fee). The landlords must be served with the order which may be filed in the Provincial Court of British Columbia, Small Claims division for enforcement.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$10,100.00.

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 13, 2022

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Residential Tenancy Branch