



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### 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 *Residential Tenancy 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 the tenants were accompanied by 2 Articled Students and Principal. One of the tenants and the landlord gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions. The tenant's Articled Student gave opening submissions and the landlord gave closing submissions.

The parties agree that all evidence has been exchanged, all of which 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 *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for compensation in accordance with Section 51 of the *Act* and other expenses?

### Background and Evidence

**The tenant** testified that this fixed-term tenancy began on June 15, 2020 and reverted to a month-to-month tenancy after January 31, 2021. Rent in the amount of \$2,000.00 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 \$1,000.00 as well as a pet damage deposit in the amount of \$250.00, all of which has been returned to the tenants. The rental unit is a suite in the landlord's house and the landlord resided upstairs during the tenancy.

The tenant further testified that on March 23, 2022 the tenants received a letter from the landlord, which gave the tenants 2 options. A copy has been provided for this hearing, which states:

"Further to our conversation last month, my parents are scheduled to visit (the City) on June 5, 2022. The current plan for them is to stay with us until Jul 23, 2022.

1. You can take all your belongings and we can terminate the lease. In addition to two months notice (already provided via this letter), I will also give you 1 month of rent allowance.
2. I can sublet the suite from you for my parents. You can leave some of the heavy stuff behind (like bed and couches) but I will still want you to clear up non-essential items and take them to storage or anywhere else. We can do a walk-through in May to identify the stuff that stays in the suite and the stuff that has to be moved out.

"Under Option #2 – you don't have to pay rent for the month of June/July and I won't pay you 1 month of rent allowance, as I am not terminating the lease. I am ready to sign an additional 6 month lease (starting August 2022) for the base rent of 2k under option #2. The rent after 6 months will go up as per approved limits.

"Under Option #1 – you can still apply to come back when my parents leave Canada, but the rent will go up as per the current market rate, which I think is between \$2,300 to \$2,400.00. I will have to check.

"Please note that you still owe me \$630 for utilities between Sep-Mar 21 (calculations sent via text message to (D) in March). Also you sent e 2k for April, May, June (from July onwards I received 2,100). Thus in total you owe me 930 for past utility bills.

"I would like to get the utility bills cleared before you move back into the suite in August. I have had a great time living with the two of you and thus I have thought through various options to make sure the 'potential' move is manageable on your end.

“Please let me know if you have any questions. The tickets for my parents are booked today and thus the travel plan is final, unless Covid restrictions change anything.”

The tenant testified that during dealings with the landlord, he was extremely volatile and the tenant felt that the tenants didn't have an option to say “no” without their home being threatened. The tenant wanted to extend the lease, but the landlord refused. The tenant felt like there wasn't a choice, the housing was being threatened and the tenant's well-being ignored. The tenant wanted to contact the Residential Tenancy Branch to find out the tenants' rights, however the tenant has 11-hour days at school and when the letter arrived, it was a very busy time for the tenant and was only given 5 days to understand it. A recording has also been provided for this hearing, wherein the tenant told the landlord that the tenant wanted to contact the Residential Tenancy Branch, then Option 1 was rescinded by the landlord. The tenants had to remove all furniture and rent would be increased, with no longer an option to return, except at a higher rate of rent. The landlord wanted an answer right away or by the end of the evening.

There was no time to think about it, it escalated and the tenant feared retaliation. To move out within 2 months, the tenant had to pack in May, finish final exams and decide whether or not to do another semester, secure pet sitters for the tenants' cats and had to search for other housing options. It was during high tourism, and the tenants ended up staying with family in California. Some furniture was taken with the tenants, and a few boxes were stored in the suite or garage, and a neighbour stored some of it for free.

The tenants have provided invoices for things such as food, lodging, gas and had to get new tires and an oil change to prepare the car for the drive to California. The tenants didn't have much contact with the landlord over those 2 months, other than to pick up some things from the garage. The letter said that the tenants could return in July, but the landlord's parents stayed with the landlord in his suite for another month after the tenants returned on or about July 28.

The tenant described the relationship with the landlord after that as “cantankerous” and then the landlord served another eviction notice for his parents to move in, ending the tenancy on January 31, 2023. The parties had started a new lease for August, 2022 to January 31, 2023 for the same amount of rent, and received the Two Month Notice to End Tenancy For Landlord's Use of Property in October, and 5 days later received a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities.

The tenants moved out on May 15, 2023 and the parties negotiated, resolving the 10 Day Notice.

The tenants have provided a Monetary Order Worksheet setting out the following claims, totaling \$28,938.50:

- \$24,000.00 for 24 months of rent in violation of 51(2);
- \$2,000.00 for unpaid free month of rent 51(1); and
- \$2,938.50 for food, housing, travel expenses.

**The landlord** testified that the tenants left their belongings in the rental unit for 2 months and then came back. According to the definition of eviction in Section 44(1) of the *Residential Tenancy Act*, the eviction never happened. The tenants even returned to the suite to get some things. The landlord did not provide a notice to end the tenancy, but asked the tenants to go with the legal option and a proper eviction in March, 2023. The landlord's parents arrived in June, and the landlord gave the tenants his word that the tenants could return. However, if the tenants had selected Option 1, the landlord's parents would have stayed longer.

The tenants chose Option 2, which was to return to the rental unit for the same amount of rent. The tenants already had plans to go to California, and a screen shot from a website talking about a live event in Los Angeles has been provided for this hearing. Also provided are copies of numerous text messages and emails exchanged between the parties.

The tenants wrongfully considered that the landlord's letter was an eviction; it does not comply with the guidelines. The landlord asked the tenants to leave as per the guidelines and eviction in June, but the tenants suggested leaving furniture behind and the landlord accepted their request. The landlord also told the tenants that the landlord could not sign a new lease because his parents were arriving in the summer. The tenants said they had plans for the summer, and the landlord said he would consider that. The tenants didn't ask for the security deposit or pet damage deposit, and the lease continued, then the landlord gave a notice to end the tenancy.

The landlord had served proper notice to evict in November, 2022 and the parties had a hearing scheduled for April, 2023 after the tenants disputed it. The tenants moved out 45 days after the hearing, and the landlord's parents lived with the landlord during that time. The parties settled the dispute 1 day before the hearing, and the tenants were to vacate on May 15, 2023. In good faith the landlord gave the tenants more time. The landlord's parents stayed for 6 months, and moved into the rental unit after the tenants left.

SUBMISSIONS OF THE TENANTS' LEGAL REPRESENTATIVE:

Under Section 52 (2) this was an improper eviction, not standard. The tenants were coerced so the landlord's parents could live in the suite for 2 months. The letter that the landlord gave to the tenants provided for this hearing outlines options for the tenants to leave while the landlord's parents stay, and move back in for same rental amount, or be evicted and only return if they want to pay market rent which would be about \$300.00 more. Then the landlord rescinded the option to return to the suite and said the tenants had to remove all furniture because the tenants wanted to contact the Residential Tenancy Branch. The tenants felt they had no other options but to leave for 2 months and had to remove their furniture from the suite. The tenants had to stay with family, incurring costs. The landlord only used the suite for 2 months. The tenants claim compensation as well as 12 months' compensation. The landlord did not provide proper notice, only a typed letter with options. The tenants felt coerced.

#### SUBMISSIONS OF THE LANDLORD:

The tenants were fully aware of their rights. If coerced, they could have filed a dispute, but didn't because they wanted Option 2 and to go on their trip, which they did and benefitted by not paying rent for 2 months.

#### Analysis

Although the options provided by the landlord to the tenants are not in accordance with the *Act*, the tenants agreed to vacate for 2 months, which they did and then returned for the same amount of rent. Therefore, the tenancy did not end when the tenants went to California, and the landlord used the rental unit for his parents to reside in while in Canada.

Counsel for the tenants submit that the tenants were "coerced" into agreeing with that option in order to protect their tenancy without having to pay a larger amount of rent. I have reviewed articles referred to in Black's Law Dictionary regarding coercion, which states, in part:

Duress and coercion are often used interchangeably, but they are individual elements of a situation. Duress refers to the mindset of a person who is being forced into a certain action while coercion is the actions made by the other party (such as physical or economical threats).

In this case, the landlord offered options to the tenants:

“Under Option #1 – you can still apply to come back when my parents leave Canada, but the rent will go up as per the current market rate, which I think is between \$2,300 to \$2,400.00.”

“Under Option #2 – you don’t have to pay rent for the month of June/July and I won’t pay you 1 month of rent allowance, as I am not terminating the lease. I am ready to sign an additional 6 month lease (starting August 2022) for the base rent of 2k under option #2. The rent after 6 months will go up as per approved limits.

The landlord would have been well within his rights to end the tenancy with a Two Month Notice to End Tenancy For Landlord’s Use of Property, so long as the landlord was acting in good faith and used the rental unit for the purpose contained in the Notice and for at least 6 months duration. Although the landlord did not end the tenancy in that manner, I am satisfied in the evidence that the landlord would have accomplished that, having testified that if the tenants had selected Option 1, the landlord’s parents would have stayed longer than the time that the tenants had vacated.

The *Residential Tenancy Act* states:

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The *Act* is very specific about a tenant receiving a Notice to end the tenancy. Since the landlord did not issue such a Notice to end the tenancy, until well after the tenants returned, which is not an issue in this application, the tenants are not entitled to 12 times the monthly rent, or compensation of one month of rent.

That leaves the question of whether or not the tenants are entitled to compensation for the landlord using the rental unit for 2 months.

I have reviewed all of the evidence of the parties, including the telephone recording, and it is clear that the tenants chose Option #2 on March 28, 2022, and the tenants vacated on or about June 4, 2022 and returned on or about August 1, 2022. Rent was not increased upon their return, and the tenancy ultimately ended on May 15, 2023.

Although it is unusual for a landlord to sub-let a rental unit while the tenants are away, the landlord testified that the tenants planned to go to California on holiday to visit family and has provided a string of text messages wherein the tenants indicate that they had already left, driving to Seattle, visiting family and then to L.A. for the tenant's birthday and family visits. The telephone recording contains statements of the tenants that they would be in L.A. for the month of July.

I agree that the tenants weren't given much time to consider the options provided by the landlord, however I also accept that the landlord didn't have much time because if the tenants hadn't agreed to leave for 2 months, the landlord would have had to serve the Two Month Notice to End Tenancy For Landlord's Use of Property within a short period of time in order to end the tenancy effective on June 1.

What's missing for me is where the landlord expected the tenants to go for 2 months. It would not have been feasible to rent another home.

I agree that the tenants were coerced to move out for 2 months, which is contrary to the law. The tenants moved their belongings, albeit some of which was stored at the rental house, and moved back in. I find that to be an unfair inconvenience for the tenants. Moving expenses are generally considered to be the equivalent of 1 month's rent payable under the tenancy agreement. The law also permits me to award nominal damages, which I find are warranted in this case, in the equivalent of 1 month's rent, or \$2,000.00.

I am also satisfied that the tenants have suffered monetary damages as a result of the landlord's options. Considering that the tenants had plans to go to California for the month of July in any event, I accept half of the food, housing and travel expenses, or \$1,469.25 ( $\$2,938.50 / 2 = \$1,469.25$ ) has been proven.

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

I grant a monetary order in favour of the tenants as against the landlord in the amount of \$3,569.25 (\$2,000.00 + \$1,469.25 + \$100.00 = \$3,569.25). 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 pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,569.25.

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 05, 2023

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Residential Tenancy Branch