

## **DECISION**

**Dispute Codes:** CNL, OPT and FF

### **Introduction**

This application was brought by the tenant seeking to have set aside a Notice to End Tenancy for landlord use, an Order of Possession for the tenant and recovery of the filing fee for this proceeding.

### **Issues to be Decided**

This application requires a decision on whether the Notice to End Tenancy should be set aside or upheld.

### **Background and Evidence**

This tenancy began on or about July 1, 2009 under a fixed term rental agreement made orally. Rent is valued at \$1,450 per month although some or all payment was by way of a contract for services performed by the tenant.

During the hearing, the tenant's agent gave evidence, corroborated by the landlord, that the rental agreement was for a fixed term to end on August 31, 2010. While there is some dispute between the parties concerning the work performed by the tenant, the Notice to End Tenancy for landlord use was issued because the landlord had need of the rental unit for his daughter.

### **Analysis**

Section 49 of the *Act* which prescribes the circumstances under which a landlord may issue a Notice to End Tenancy for landlord use permits such notice for the use of the landlord or a close family member under section 49(3) of the *Act*.

However, section 49(2)(c) states that, if the tenancy agreement is for a fixed term tenancy, *(the notice may only set an end of tenancy date that is)* not earlier than the date specified as the end of the tenancy.

Therefore, the Notice to End Tenancy, dated September 21, 2009 and setting an end of tenancy date of December 1, 2009 for this fixed term tenancy to August 31, 2010, is contrary to the *Act* and must be set aside.

As to the tenant's request for an Order of Possession, I find that the tenant already has possession and no need of an order to secure it for him.

Having found merit in the tenant's application, I find that he is entitled to recovery the filing fee for this proceeding from the landlord and hereby authorize and order that he may withhold one single \$50 amount from a future rent payment or take credit for it in a final balancing of accounts.

## **Conclusion**

The Notice to End Tenancy of September 21, 2009 is set aside and the tenancy continues and the tenant may recover the filing fee from the landlord.