

## **DECISION**

Dispute Codes      OPC FF  
                             CNC FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession for cause and to recover the cost of the filing fee from the Tenant for this application.

The Tenants filed seeking an Order to cancel the notice to end tenancy for cause and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, sent via registered mail. The Tenants confirmed receipt of the Landlord's hearing package and evidence.

Service of the hearing documents by the Tenants to the Landlord was done in accordance with section 89 of the *Act*, sent via registered mail on April 9, 2010. The Landlord confirmed receipt of the hearing package and evidence sent by the Tenant.

The Landlord, her Agent, the Tenants, and the Occupant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession under section 55 of the *Residential Tenancy Act*?

Are the Tenants entitled to an Order under section 47 of the *Residential Tenancy Act*?

### Background and Evidence

The undisputed testimony was the fixed term tenancy agreement began on February 8, 2007 and switched to a month to month tenancy after February 28, 2008. The rent is payable on the first of each month in the amount of \$1,850.00 and a security deposit of \$925.00 on January 17, 2010.

The Agent testified as a witness and acted as a translator for the Landlord. The Agent confirmed that the Landlord approached the Tenants near the end of February 2010 to try and obtain a mutual agreement to end the tenancy because she knew she was about to list the house for sale and she did not want to have to deal with any trouble from the Tenants. The Tenants refused to come to a mutual agreement to end the tenancy after which the Landlord informed them the property was going to be listed for sale.

The Agent confirmed that he personally contacted the upper and lower tenants by telephone on March 19, 2010 to confirm that he was the listing agent for the property. The Agent argued that he spoke with the Occupant via telephone, confirmed that he was the listing agent, and he had planned an open house for March 28, 2010 to reduce the amount of individual showings and interruption to the Tenants.

The Occupant testified and confirmed that he spoke to the realtor on March 19, 2010 and that he told the realtor that he had no authority with respect to the tenancy so the realtor would have to post a notice of entry on the door. The Occupant confirmed that he saw the realtor's for sale sign posted out front of the rental unit.

The Agent testified that he provided the Tenants with verbal notice of the open house on March 19, 2010 and again, in writing, when he posted the notice of open house on March 22, 2010 for entry to their rental unit on March 28, 2010, which is supported by their photo and documentary evidence. The Agent stated that his office received a call from one of the Tenants who was checking up on him to confirm he was a realtor with that office.

The Landlord testified that the Tenants provided no response to the notice until the evening of March 27, 2010 when Tenant (2) called the Landlord stating that she was not going to allow them access to the rental unit for the open house the next day and if they attempted to gain entry Tenant (2) would tell the buyers how bad the rental unit is with water leaks and problems with pump in the closet.

The Agent confirmed that they attended the rental unit at 1:30 p.m. to gather the attendees, prior to the 2:00 p.m. showing, to ensure an orderly viewing, and at 1:45 p.m. the Agent knocked on the door. The Agent argued that they were met with very angry Tenants, who came outside and demanded to see the realtor's ID. The Agent explained to the Tenants that realtors do not have formal ID like police officers and explained to the Tenants that the Landlord was present and they should allow the Landlord access. The Agent stated that Tenant (1) and Tenant (2) "were so mad" that they began to tell the waiting potential buyers bad things about the property. At this time the Agent stated that the Landlord attempted to gain access to the rental unit with her key and found that while her key unlocked the door, they could not open the door because the Tenants has something blocking the door preventing it from opening.

The Agent testified that shortly after attempting to do the open house he returned to the rental unit the same day, March 28, 2010, with the Landlord at which time the Landlord attempted to serve Tenant (2) personally with the 1 Month Notice to End Tenancy. The Agent referred to their photo evidence which supports his testimony that Tenant (2) had the 1 Month Notice opened and was returning it to the Landlord and told the Landlord to post the Notice on their door.

Tenant (1) testified and confirmed the Occupant told her about the realtor's call on March 19, 2010. Tenant (1) confirmed there was a realtor's for sale sign on the property, confirmed receipt of the March 22, 2010 notice to entry and confirmed that they denied the realtor, the Landlord, and potential buyers access to the rental unit on March 28, 2010. Tenant (1) argued that they did not see the realtor's ID, so they did not grant entry, and confirmed that the Landlord was present and the Landlord accessed the lower rental unit with the Landlord's keys. When I asked Tenant (1) if she was the

person who called the realty company to verify the realtor she told me that it was Tenant (2) who called and that she did this on March 27, 2010. I then asked Tenant (1) if the Landlord requested entry to the rental unit during the attempted open house and Tenant (1) stated that she was at the other end of the crown and it was Tenant (2) who spoke with the Landlord.

Tenant (2) testified and confirmed she called the Landlord on March 27, 2010 and when I asked Tenant (2) if the Landlord asked her to allow them entry to the unit during the open house Tenant (2) stated that the Landlord only spoke to Tenant (1).

The Landlord confirmed that her key worked in the lock however something was preventing the door from opening.

Tenant (2) came on the telephone again and stated “now I remember the Landlord opened the door”. I confirmed with Tenant (2) that the Landlord put her key in and unlocked the door but that the door was barricaded which prevented the Landlord from opening the door. Tenant (2) confirmed that her husband and brother were inside the house preventing the door from opening.

### Analysis

All of the testimony and documentary evidence was carefully considered.

### **Landlord's application**

Section 47 of the Act provides that a Landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized a lawful right or interest of the landlord.

The evidence supports that the Landlord and her Agent complied with the Act in providing the Tenants with proper notice to enter the unit to show it to prospective buyers and the Tenants refused the Landlord access in contravention of the Act. Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenants in a manner that complies with the Act. Upon consideration of all the evidence

presented to me, I find the Landlord had valid reasons for issuing the Notice. Therefore I approve the Landlord's request for an Order of Possession.

The Landlord has been successful with her application; therefore I award recovery of the \$50.00 filing fee.

### **Tenants' application**

Having awarded the Landlord an Order of Possession above, I hereby dismiss the Tenants' application.

As the Tenants have not been successful with their application, I decline to award them recovery of the filing fee.

### Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Respondent Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$50.00**. The order must be served on the respondent and is enforceable through the Provincial Court and enforced as an order of that Court.

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: May 20, 2010.

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Dispute Resolution Officer