

## **DECISION**

**Dispute Codes**      OPB, FF, OLC, PSF, AS

### **Introduction**

This hearing was convened by way of conference call to deal with cross applications by the landlords and the tenants. The landlords have applied for an Order of Possession claiming that the tenants have breached an agreement with the landlord, and to recover the filing fee from the tenants for the cost of this application.

The tenants have applied for an order that the landlord comply with the *Act*, regulation or tenancy agreement, that the landlord provide services or facilities required by law, and to allow the tenant to assign or sublet because the landlord's permission has been unreasonably withheld.

### **Issues(s) to be Decided**

Are the landlords entitled to an Order of Possession?

Are the tenants entitled to an order that the landlords comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order that the landlord provide services or facilities required by law?

Are the tenants entitled to an order allowing the tenants to assign or sublet because the landlord's permission has been unreasonably withheld?

### **Background and Evidence**

This tenancy began about 10 years ago under an old lease, and the tenant still resides in the unit. Rent in the amount of \$809.00 is due on the 1<sup>st</sup> of each month, and there are no rental arrears.

The parties testified that a previous dispute resolution hearing was conducted, wherein the Dispute Resolution Officer ordered the terms of a settlement agreement reached at that hearing. That settlement included that the occupant, "MS" will vacate the unit by not later than 1:00 p.m. Sunday, February 28, 2010. Following that, the landlords will not require that occupant "MS" complete an application for tenancy, and that the parties comply with the *Act*. A copy of that Decision was provided as evidence in this hearing in advance.

The tenant testified that arrangements had been made that the landlord was to go to the rental unit before going on a 4 week vacation to Hawaii, on or about February 23, 2010. The tenant gave the landlord an Application for Tenancy to allow the occupant to stay but the landlord did not act on it and did not notify the tenants, or the other landlord before going on vacation. When she returned from vacation she posted a letter on the door of the rental unit that stated that the occupant had been ordered to vacate the unit by not later than 1:00 p.m. on Sunday, February 28, 2010, and that \$65.00 was due for rent for the month of March, 2010. A copy of the letter, dated March 22, 2010 was provided as evidence in advance of the hearing. The letter further stated that the occupant, "MS" must exit the premises no later than 1:00 p.m. on March 31, 2010 or a 30 day Notice of Eviction would be issued.

The landlord testified that he wanted the tenant to go by the rules of the old Tenancy Agreement, and wanted the power to make the decision as to whether or not the occupant could stay. When the tenant was asked what changed since he agreed that the occupant would move out, the tenant stated that he was pressured and realized that he didn't get an answer from either landlord, and that only one landlord saw it.

On April 6, 2010, the landlord posted a 1 Month Notice to End Tenancy for Cause because of a breach of a material term of the tenancy; the tenant had not complied with the order of the previous Dispute Resolution Officer within 30 days. A copy of the Notice to End Tenancy was not provided in advance of the hearing, but the landlord testified that it stated that the tenancy was to end on May 6, 2010.

At the conclusion of the hearing, the landlord agreed to withdraw the notice to end tenancy for the tenant, but requested an Order of Possession for the occupant.

### **Analysis**

I am unable to rule on a Notice to End Tenancy without seeing it. However, the landlord testified that the notice was posted to the door of the residence on April 6, 2010 with a move-out date of May 6, 2010, which is contrary to the *Act*. The notice must be issued before the end of the month, and then specify a move-out date of one month after that. In this case, the move out date could not be any earlier than May 31, 2010. Therefore, and due to the fact that the landlord agreed to withdraw the notice, the notice to end tenancy is hereby cancelled.

With respect to the occupant, an order was already made by a Dispute Resolution Officer, which cannot be changed by way of this process. I find that the principle of res judicata applies, meaning that the matter has already been decided and is therefore final and binding on the parties.

The *Act* gives me the authority to deal with the tenancy and the tenancy agreement, but I have no authority to make an order against the occupant who is not a party to that agreement. I refer to Residential Tenancy Policy Guideline #13 – Rights and Responsibilities of Co-tenants, which states as follows:

#### **“Occupants**

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.”

### **Conclusion**

The application of the tenant is hereby dismissed without leave to reapply.

I order that the tenant comply with the Decision of the previous Dispute Resolution Officer.

Since neither party has been successful with their application, I decline to award the filing fee in favour of either party.

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 28, 2010.

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Dispute Resolution Officer