

# **DECISION**

## **Dispute codes**

ET, FF

## **Introduction**

This hearing was convened in response to an application by the landlord to end the tenancy early and obtain an Order of Possession. The landlord's application is inclusive of an application for recovery of the filing fee for this application.

Both parties attended the conference call hearing and participated with their submissions and testimony. The tenant remains in the rental unit. The landlord reiterated their application with an oral request for an Order of Possession.

## **Issue(s) to be determined**

Is the landlord entitled to an order ending the tenancy early?

Is the landlord entitled to an Order of Possession?

## **Background and Evidence**

The landlord served the tenant with a One (1) Month Notice to End Tenancy for Cause (Notice to End) dated March 15, 2010, with an effective date of April 30, 2010. The tenant acknowledges receiving the Notice to End on March 19, 2010. The tenant has not filed for dispute resolution to dispute the Notice to End within the time prescribed in the Residential Tenancy Act (the Act) and also stipulated in the Notice to End.

During the hearing the parties turned their minds to a possible settlement of this matter. The landlord agreed to mitigate their request for an Order of Possession - for it to be effective May 31, 2010. On this basis I declined to hear evidence in respect to an early end to the tenancy – that is, an end to the tenancy earlier than the effective date of the valid Notice to End (April 30, 2010).

## **Analysis**

The landlord made an application to end the tenancy early on the basis that it would be unreasonable or unfair to the landlord or other occupants of the residential property to

wait for a Notice to end the tenancy under section 47 (Landlord's Notice for Cause) to take effect – in this matter April 30, 2010. The landlord mitigated their request with their agreement the tenancy can continue beyond the effective date of the Notice to End – thereby negating the need for an Order ending the tenancy earlier than the date specified in the Notice to End.

None the less, Section 55 of the Act, in part, states as follows: **(emphasis for ease)**

### **Order of possession for the landlord**

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

**(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:**

- (a) a notice to end the tenancy has been given by the tenant;
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;**
- (c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

**(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.**

As a result, the landlord is entitled to an Order of Possession, and at the request of the landlord the Order of Possession may specify that it be effective May 31, 2010. As per Section 55(3) of the Act, **I so Order** that the tenancy ends May 31, 2010.

As the landlord was successful in this application, I hereby grant the landlord recovery of the filing fee in the amount of \$50.

### **Conclusion**

**I grant** an Order of Possession to the landlord with an effective date of **May 31, 2010**. Should the landlord determine to act on this Order, the tenant must be served with this Order of Possession. Should the tenant fail to comply with the order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

**I Order** the landlord may deduct the amount of **\$50** from the tenant's security deposit.

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*.