

## **DECISION**

**Dispute Codes:** CNL, OPC, O and FF

### **Introduction**

These applications were brought by the tenant as against a party who I find to be an occupant and by the occupant against the landlord.

By application of May 19, 2010, the tenant seeks an Order of Possession pursuant to a one month Notice to End Tenancy for cause served on the occupant on April 28, 2010.

By application of May 27, 2010, the occupant seeks to have set aside a two-month Notice to End Tenancy for landlord use served on the tenant and the occupant dated Ma 12, 2010 and setting an end of tenancy date of July 30, 2010 (automatically corrected to July 31, 2010 under section 53 of the *Act*).

### **Issues to be Decided**

These applications first required a decision on whether the second applicant is a tenant or an occupant. The applications then require decisions on whether either or both Notices to End Tenancy should be upheld or set aside.

### **Background and Evidence**

The tenant's rental agreement began June 1, 2009 and his rent is \$850 per month.

As he had done previously, the tenant sought and was granted the landlord's approval to take in a roommate to share in the rent. The occupant moved in on or about November 1, 2009 and paid the tenant \$400 per month.

## **Analysis**

The landlord gave evidence that she did not amend the rental agreement to include both parties which would have created co-tenancy. Neither did the landlord create a separate agreement with the occupant which would have created a tenancy in common.

Therefore, I must find that the second applicant is an Occupant.

Residential Tenancy Policy Guideline 13-2 provides that:

"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."

With respect to the Notice to End Tenancy for landlord use, I must find that the occupant does not have standing under a rental agreement to bring an application against the landlord. The application is dismissed.

With respect to the tenant's application for an Order of Possession against the tenant, I find that such an order is moot as the tenant has agreed to honour the landlord's Notice to End Tenancy for landlord use and to vacate the rental unit on July 31, 2010 and the occupant does not have standing that would require a Notice to End tenancy. The application is dismissed.

To ensure the rights of the landlord in this matter and for clarity, I exercise the discretion granted under section 62(3) of the Act and grant the landlord an Order of Possession against both the tenant and the occupant to take effect at 1 p.m. on July 31, 2010.

## **Conclusion**

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, effective at 1 p.m. on July 31, 2010 for service on the tenant and the occupant.

July 6, 2010