



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** CNL, FF

### **Introduction**

This hearing dealt with the Tenants' application to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the Notice); to be allowed to change the locks to the rental unit; and to recover the filing fee from the Landlord.

Both parties gave affirmed testimony.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the testimony and evidence relevant to the issues and findings in this matter are described in this Decision.

### **Preliminary Matter**

The Landlord testified that he did not receive copies of the Tenants' evidence until August 19, 2010. The Tenants testified that they were unaware until August 17, 2010, that they had to provide the evidence prior to the Hearing. Both parties are required to provide copies of evidence to the other party and to the Residential Tenancy Branch 5 clear days before the date of the Hearing. This information is provided to the parties in the Notice of Hearing documents.

It is important to note that the Tenant's evidence package which was provided to the Landlord on August 19, 2010, was not on the case file. This evidence will not be considered.

### **Issue to be Decided**

- Should the Notice issued June 27, 2010 be cancelled?
- Are the Tenants entitled to change the locks to the rental unit?

### **Background and Evidence**

The parties agreed on the following facts:

- The Notice issued June 27, 2010, was posted to the Tenants' door on June 27, 2010.
- The Tenancy Agreement, a copy of which was entered in evidence by the Landlord, was a one year lease, expiring May 31, 2010, with no notice to either party. Monthly rent was \$1,500.00 per month. The Tenants paid a security deposit in the amount of \$750.00 on May 5, 2009.

The Landlord provided the following documents in evidence:

- Copy of the Notice to End Tenancy issued June 27, 2010.
- Copy of the Contract of Purchase and Sale for the rental unit dated June 19, 2010.
- Copy of Addendum dated June 25, 2010, removing the "subject to" conditions.
- Copy of letter from the purchaser dated June 25, 2010, asking the Landlord to give notice to the Tenants that the purchaser intend to move into the rental unit.

The Landlord requested an Order of Possession, should the Tenant's application be unsuccessful.

### **Analysis**

The reason given to end the tenancy on the Notice is based upon section 49(5) of the Act which provides:

(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
  - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
  - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Based on the documentary evidence provided by the Landlord, I find that the Landlord entered into a Contract of Purchase and Sale to sell the rental unit, that all conditions on which the sale depended were satisfied, and that the purchaser asked the Landlord in writing to give notice to end the tenancy because the purchaser intends in good faith to occupy the rental unit. I further find that all of these things occurred before the Landlord issued the Notice to End Tenancy. Having found that the Landlord complied with Section 49(5) of the Act, the Tenants' application to cancel the Notice is dismissed.

During the Hearing, the Landlord requested an Order of Possession if the Tenants were unsuccessful in their application to cancel the Notice. Section 55(1) of the Act states:

- (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.

Based on the testimony and documentary evidence provided, I find that the Notice was provided to the Tenants in accordance with the provisions of Section 88(g) of the *Residential Tenancy Act* (the "Act"). Service in this manner is deemed effective 3 days

after service. Therefore, I find that the effective date of the 2 month Notice to End Tenancy is August 31, 2010.

Based on the provisions of Section 55(1) of the Act, I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., August 31, 2010.**

The tenancy is ending and therefore I dismiss the Tenants' application to change the locks on the rental unit. The Tenants have not been successful in their application and are not entitled to recover the cost of filing their application from the Landlord.

### **Conclusion**

The Tenants' application is dismissed in its entirety.

I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., August 31, 2010.** This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia 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: August 20, 2010.

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Dispute Resolution Officer