

## **DECISION**

**Dispute Codes:** CNL and FF

### **Introduction**

This application was brought by the tenant seeking to have set aside a two-month Notice to End Tenancy for landlord use dated May 30, 2010 and setting an end of tenancy date of July 31, 2010. The tenant also sought to recover of the filing fee for this proceeding from the landlord.

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

This matter requires a decision on whether the Notice to End Tenancy was served, in good faith, complete and on time to enable the landlord to accommodate a sale of the rental unit as stated on the notice.

### **Background and Evidence**

This tenancy began on November 1, 2008. Rent is \$825 per month and the landlord holds a security deposit of \$412.50 paid on or about October 25, 2008. The rental unit is a basement suite in a home, the main level of which was occupied by the landlord.

During the hearing, the landlord gave evidence that he had served the Notice to End Tenancy for landlord use as one of the condition of sale of the rental building to new owners who took possession on June 1, 2010.

The landlord submitted a copy of the addendum of the sales agreement dated May 16, 2010 which required that he give two-month notice to the tenant no later than June 1, 2010. He also submitted a copy of a letter from the purchasers dated May 22, 2010 confirming that they needed all of the home and reiterating their request that the landlord serve the tenant with the Notice to End Tenancy for landlord use.

The landlord also submitted a copy of the duly completed Notice to End Tenancy dated May 30, 2010.

The parties concurred that the landlord had verbally advised the tenant that the notice was forthcoming in late May. The landlord offered to give it personally to the tenant that day, but the tenant asked him to put it in their common laundry room.

The tenant contests the notice on the grounds that he did not receive it until June 1, 2010 and that it was missing the second page.

## **Analysis**

Given that the Notice was dated May 30, 2010 and given that the parties concur that it was served by posting, I will give the benefit of doubt to the tenant and find as fact that the tenant was not served until June 1, 2010. The effect of that finding is that the effective date of the notice is automatically corrected under section 53 of the *Act* from July 31, 2010 to August 31, 2010.

As to the question of whether the second page of the notice was provided, I find on the balance of probabilities that it was. Accordingly, I find that the Notice to End Tenancy is lawful and valid as corrected by section 53 of the *Act*.

Given the possibility of that determination, the landlord requested and I find he is entitled to an Order of Possession under section 55(1) of the *Act* to take effect at 1 p.m. on August 31, 2010.

I further find that the tenant should remain responsible for the filing fee in this matter.

## **Conclusion**

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on August 31, 2010.

As a matter of note, I had pondered whether the tenant might have recourse if the rental unit was not used for the stated purpose. However, given that the stated purpose was to accommodate the sale and that did, in fact, complete, there would appear to be no further recourse for the tenant beyond return of the August 2010 rent as provided by section 51 of the *Act*.

August 9, 2010

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