



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes** CNL, FF

### **Introduction**

This hearing was convened by way of conference call to deal with the tenant's application for an order cancelling a notice to end tenancy for landlord's use and to recover the filing fee from the landlord for the cost of this application.

The parties gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

The landlord was represented by an agent, and the tenant attended the conference call hearing. All evidence of the parties has been reviewed and considered.

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

Is the tenant entitled to an order cancelling a notice to end tenancy for landlord's use of property?

### **Background and Evidence**

This month-to-month tenancy began on March 1, 2005. Rent in the amount of \$740.00 is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$350.00. The rental unit is one of 37 units of single family homes (townhouses) owned by one landlord.

The tenant testified that she had been told by the owner that a new manager had been hired in May, 2010 who managed other buildings as well, and that the new manager would be at the site from Vancouver 2 days per week.

The tenant further testified that on July 22, 2010 the new manager served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which was provided in advance of the hearing. That notice is dated July 22, 2010, with an expected date of vacancy being September 30, 2010 and states that the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property. The tenant further testified that there are 7 other units in the complex that are currently vacant.

The landlord's agent testified that the new manager was moving into the rental unit because it had been damaged in a fire previously, and was newly renovated. The new manager is moving to the area, and would be living in that unit full time commencing October 1, 2010. He further testified that the tenant's evidence of 7 other units currently being vacant is not disputed, and that 10 units are for sale.

The landlord's agent further testified that the landlord would allow the tenant more time to find housing, and asked for an Order of Possession for November 30, 2010 and that no rent would be charged for the month of November, 2010.

### **Analysis**

The landlord has a right under the *Residential Tenancy Act* to issue a 2 Month Notice to End Tenancy for Landlord's Use of Property if the use of the property is one that is described in Section 49, which I find is the case. The intent of the landlord has been questioned by the tenant, and that places the burden of proof on the landlord to establish that he/she truly intends to do what is indicated on the notice to end tenancy.

I find that the landlord has established that the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property. I also find that pursuant to Section 51 of the *Act*, the tenant is entitled to receive from the landlord

an equivalent of one month's rent and may withhold that amount from the last month's rent under the tenancy. Further, pursuant to Section 50 of the *Act*, the tenant may end the tenancy earlier than November 30, 2010 by giving the landlord at least 10 days' written notice and would then be entitled to compensation for any rent already paid beyond the effective date of the tenant's notice in addition to the compensation under Section 51.

### **Conclusion**

Based on the above facts I hereby dismiss the application of the tenant. I further grant an Order of Possession in favor of the landlord effective November 30, 2010. The tenant must be served with the 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.

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: September 20, 2010.

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Dispute Resolution Officer