

## **DECISION**

Dispute Codes      CNC, CNR, OLC, O

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that all rent had now been paid for the rental premises and that the landlord was no longer pursuing an Order of Possession on the basis of the 10 Day Notice to End Tenancy for Unpaid Rent issued on September 23, 2010. On that basis, there was no need to continue with the tenant's application to cancel the notice to end tenancy for unpaid rent. The parties agreed that the landlord posted the 1 Month Notice to End Tenancy for Cause on August 27, 2010. The parties agreed that the landlord's application for dispute resolution was sent by the landlord by registered mail and received by the tenant on October 4, 2010. I am satisfied that the landlord served these documents in accordance with the *Act*.

During the various hearings, the landlord made an oral request for an Order of Possession if the tenant's application for cancellation of the notice to end tenancy for cause were dismissed.

Prior to the October 19, 2010 hearing, the tenant's advocate requested an adjournment as the tenant would be in court that day at the same time. After hearing arguments from the parties regarding that request, I granted an adjournment until October 28, 2010.

Prior to the October 28, 2010 hearing, the tenant's advocate requested another adjournment, as the tenant was now incarcerated until late November 2010. While discussing that request for an adjournment, the parties, including the tenant's sister who was assisting the tenant's advocate, discussed possible ways of resolving this dispute. As the parties expressed a willingness to seek a resolution of this matter, the landlord did not oppose the tenant's advocate's request for an adjournment. I adjourned this matter until November 9, 2010, to allow the parties additional time to explore a possible resolution of this dispute. This hearing reconvened on November 9, 2010.

#### Issues(s) to be Decided

Is the tenant entitled to cancellation of the landlord's 1 Month Notice to End Tenancy for Cause? Is the landlord entitled to an Order of Possession?

#### Background and Evidence

This tenancy commenced on August 27, 2002 as a periodic tenancy. The landlord testified that the 1 Month Notice to End Tenancy for Cause was issued because the tenant had engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. The parties agreed that the tenant has now been convicted of a criminal offence which has led to his incarceration at a provincial correctional facility. The tenant's advocate maintained that the criminal activity had not occurred on the rental premises and, as such, the landlord did not have justification for issuing the 1 Month Notice to End Tenancy for Cause. In issuing the notice to end tenancy for cause, the landlord cited the Crime-Free Housing Addendum the tenant had signed when he moved into the rental unit in 2002. The landlord also provided a number of statements from tenants who were concerned about a continuation of this tenancy in this property.

During the hearing and during adjournments, the parties discussed alternatives to determine if the landlord could make available a more suitable rental unit for the tenant elsewhere in the landlord's housing portfolio. After turning their minds to compromise, the parties were able to achieve a resolution of their dispute.

### Analysis

Pursuant to Section 63 of the *Residential Tenancy Act*, the dispute resolution officer may assist the parties settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During this hearing, the parties reached an agreement to settle their dispute. Both parties agreed to the following terms:

1. The landlord agreed to transfer the tenant to another property within the landlord's housing portfolio at XXX in YYYYYY before December 1, 2010.
2. The parties agreed to end this tenancy by one o'clock in the afternoon on November 30, 2010.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. For greater clarity, neither party will file any further applications against the other with the Residential Tenancy Branch relating to this matter.

As discussed with the parties, I am providing the attached Order of Possession giving effect to this agreement to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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*.