



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPL, FF

### Introduction

This was an application for an order for possession. The application was heard by conference call. The applicant, the respondent and the named witness, participated in the hearing

### Issues(s) to be Decided

Is the applicant entitled to an order for possession?

### Background and Evidence

The subject property is a house in New Westminster. The witness F.A.S. lives in the upstairs portion of the house. The respondent lives in the basement suite of the house. On September 22, 2010 the applicant served a 2 month Notice to End Tenancy for landlord's use on the respondent, who is her father. In her application filed on October 13, 2010 the applicant stated: "I want to move into my house". According to the witness, F.A.S. who the applicant referred to as her grandfather, some seven years ago he put the applicant's name on the title to the house as a co-owner. He testified that he did so because he wanted the applicant to have the house when he died. F.A.S. testified that the respondent occupies the basement suite in the house with his permission and has done so for approximately 20 years. He said that on September 22, 2010 the applicant came to the house and assaulted him in the course of serving a 2 month Notice to End Tenancy on the respondent. The respondent submitted an undertaking signed by the applicant on September 23, 2010 wherein it was noted that the applicant had been charged with assault and uttering threats and, in order to be

released from custody undertook, among other matters to have no contact with F.A.S., except through legal counsel and was ordered not to attend at the subject property.

The applicant said, among other things that her father the respondent was a “squatter” and a “parasite” and had no business living in the house. She insisted that she was the co-owner of the property and was therefore able to evict the respondent. The applicant said at one point that she did not intend to live in the property, later she said she did intend to live there. According to the applicant she currently lives in rented accommodation directly across the street from the subject property.

During the hearing the applicant was combative, argumentative, abusive and insulting toward the respondent and the witness. She would not refrain from interrupting when I was attempting to hear testimony from the respondent and the witness and she would not listen or take direction from me when I directed her to stop interrupting.

### Analysis Conclusion

According to a City of New Westminster property report the applicant is named as an owner of the subject property together with the witness F.A.S. The *Residential Tenancy Act* defines “Landlord” in the following terms:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who

- (i) is entitled to possession of the rental unit, and
- (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this;

The fact that the applicant may have an interest in the land is not in itself sufficient to provide her with the authority to evict a tenant pursuant to provisions of the *Residential Tenancy Act*. The applicant has not provided evidence to show that she is a landlord under the *Act*. I accept the evidence of F.A.S. that he occupies the subject property; that he is entitled to possession of the property, that he created the tenancy between himself and the respondent and that since the inception of the tenancy he has exclusively exercised the rights of landlord under the tenancy and with respect to the basement rental unit.

The applicant has failed to show that she is the landlord; that she has exercised any rights of a landlord or that she is entitled to possession of the rental unit.

The application is dismissed without leave to reapply.

Dated: November 10, 2010.

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