

## **Decision**

**Dispute Codes:** CNL, OPL, FF

### **Introduction**

This hearing dealt with the tenant's application for cancellation of a notice to end tenancy for landlord's use of property, in addition to recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

During the hearing, the landlord's agent made an oral request for an order of possession in the event the tenant's application does not succeed.

### **Issues to be decided**

- Whether either party is entitled to any of the above under the Act

### **Background and Evidence**

Pursuant to 2 separate written tenancy agreements, copies of which are not in evidence, the tenancy began on September 1, 2005 and presently continues. The first and second agreements each spanned a two year period. Following the expiration of the fixed term set out in the second agreement, the tenancy continued on a month-to-month basis. Currently, monthly rent is \$1,700.00.

The landlord issued a 2 month notice to end tenancy for landlord's use of property dated November 29, 2010. The notice was posted on the tenant's door on that same date, and subsequently it was served to the tenant in person on December 1, 2010. A copy of the notice was submitted into evidence. The reason shown on the notice for its issuance is as follows:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

Subsequently, the tenant filed an application to dispute the notice on December 14, 2010.

It is understood that the tenant offers riding lessons on a fee for service basis on the rental property, and that her website advertises the services of a riding school. The landlord has informed the tenant that use of the property for the operation of a “riding school open to the public and not as a pasture farm,” precludes the landlord’s ability to obtain proper insurance. Arising from this, prior to the hearing the landlord’s agent undertook to propose that the parties enter into a commercial lease, however, the tenant declined. There is a dispute between the parties around whether or not the landlord ever gave written consent to the tenant to operate a riding school on the property, and further, a dispute around whether the tenant’s insurance policy provides suitable coverage for the landlord.

In relation to the grounds for ending tenancy as cited in the notice, the landlord’s agent was unable to confirm that there is a plan in place whereby “the unit will be occupied by the landlord or the landlord’s spouse or a close family member of the landlord or the landlord’s spouse.”

Despite some effort by the parties during the hearing to resolve the dispute, these efforts did not lead to a settlement.

### **Analysis**

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

Section 49 of the Act speaks to **Landlord’s notice: landlord’s use of property**, and provides in part as follows:

49(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Residential Tenancy Policy Guideline # 2 speaks to “Ending a Tenancy Agreement: Good Faith Requirement,” and provides in part as follows:

The “good faith” requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

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If the “good faith” intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord’s primary motive.

Based on the documentary evidence and the affirmed testimony of the parties, I find that the tenant filed an application to dispute the notice within the 15 day period available for same pursuant to section 49(8) of the Act.

Further, I find on a balance of probabilities that the landlord has failed to meet the burden of proving that there is a bona fide intent to use the premises for the purposes stated on the notice to end tenancy. It appears that the landlord was prepared to carry on with a landlord – tenant relationship but, for reasons related to insurance, required the negotiation of a very different lease with the tenant from the one presently in place. Faced with the tenant’s resistance to entering into the proposed lease, the landlord sought to simply end the tenancy pursuant to issuance of the subject notice.

Following from the above, as the landlord has failed to meet the burden of proving true intent, the landlord’s notice to end tenancy is hereby set aside, with the result that the tenancy presently continues uninterrupted. The landlord’s oral request for an order of possession is, therefore, hereby dismissed.

As the tenant has succeeded in this application, I find that she has established entitlement to recovery of the \$50.00 filing fee.

**Conclusion**

The landlord's notice to end tenancy is hereby set aside.

The landlord's request for an order of possession is hereby dismissed.

I order that the tenant may recover the filing fee by way of withholding **\$50.00** from the next regular payment of monthly rent.

DATE: January 10, 2011

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Dispute Resolution Officer