



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      OP, O

### Introduction

This was the hearing of an application by the landlord for an order for possession. The hearing was conducted by conference call. The landlord's representative and the tenants attended. The tenant, S.R. called in after the hearing began. She left the hearing after she testified that she was no longer an occupant of the rental property

### Issue(s) to be Decided

Is the landlord entitled to an order for possession and if so, on what date should the order be effective?

### Background and Evidence

The rental property is a house on a parcel of land in Gibsons. The tenancy began on December 1, 2005. Monthly rent is \$1,000.00.

On January 8, 2011 a fire caused extensive damage to the rental property. The fire rendered the house uninhabitable. The landlord's insurance adjuster has estimate that the repairs to the house will take six months to complete. At the hearing the tenant stated that he agreed with the adjuster's opinion.

Since the fire the tenant has occupied a fifth wheel trailer located on the rental property. The tenant has not removed his possessions from the rental house although he promised the landlord that he would do so by the end of January. The landlord testified that he rental property, is lettered with the tenant's belongings as well as cast offs and debris. At the hearing the tenant asked for more time to remove his belongings from the house and property and to find a new place to rent. He said that he intends to have a bin delivered to the property to collect the garbage and debris on the land. The landlord's position is that the fire and the extensive damage to the house has frustrated the tenancy agreement. The landlord noted at the hearing that the tenant breached his obligation to obtain insurance, had the tenant carried insurance the policy would have covered the removal and relocation of the tenant to new accommodation. The landlord

has made arrangements to received tenders for the work to repair the house. That work cannot proceed with the tenant's belongings in the house. The landlord does not want the tenant to occupy the trailer on his property. There is no water or sewage hook-up and the tenant is using the landlord's electricity to supply his trailer.

### Analysis and conclusion

'Frustration' is a doctrine of contract law that provides the basis to discharge a contract and put an end to the contracting parties' obligations under it when an event occurs that makes the contract impossible to perform, or some event takes place that significantly changes the nature of the agreement that the parties had in mind when they signed it.

The fire in the rental property caused damage that rendered the property uninhabitable for many months. I find that the accidental fire has frustrated the tenancy effective January 8, 2011 and the landlord is entitled to an order for possession. The tenant must move all his belongings from the house and property. The tenant testified at the hearing that he will remove all his belongings from inside the house by February 5, 2011. As a compromise to an immediate order for possession, the landlord agreed to accept an order for possession that will be effective on February 15, 2011. If the tenant moves all of his belongings out of the house by February 5<sup>th</sup> so that the landlord's contractors can make estimates and commence work on the house, the landlord has agreed exercise his discretion to withhold enforcement of the order and to allow the tenant until the end of February to remove his possessions from the property, as distinct from the house. If however the tenant does not empty the house as agreed the landlord will be free to enforce the order for possession on the effective date and cause the tenant's possessions and effects to be entirely removed from the house and from the property on February 15, 2011. Based on the above facts I find that the landlord is entitled to an order for possession effective February 15, 2011 after service on the tenant. This order may be filed in the Supreme Court and enforced as an Order of that Court.

Dated: January 31, 2011.

---