

## **DECISION**

### **Dispute Codes:**

CNL, FF

### **Introduction**

This hearing was convened in response to an application by the tenant. The tenant applied March 03, 2011 to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the Notice) and recovery of the filing fee. The reason stipulated in the Notice to end is that, *The landlord has all the necessary permits and approvals required by law (if necessary) to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.*

Both parties appeared at the hearing and had opportunity to be heard, provide testimony, and respond to the other party's submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The tenant does not question the good faith intent of the landlord's use of the property and intends to vacate from the rental unit as a result. The Notice to End was received by the tenant, and it was given with the name of the applicant's husband and named co-tenant (*the husband*) on the tenancy agreement. The tenant claims the Notice to End is not a valid Notice as it is not in her name: the primary named tenant on the tenancy agreement. The Applicant seeks for the Notice be set aside (cancelled) and for the landlord to provide a new Notice in her name.

The landlord orally requested an Order of Possession effective April 30, 2010 – the effective date of the Notice – should I uphold the Notice to end.

**Issue(s) to be Decided**

Is the landlord's Notice to end valid? Should the Notice issued February 27, 2011 be cancelled?

Is the landlord entitled to an Order of Possession?

**Background and Evidence**

This tenancy began December 01, 2005. Rent is \$2074 payable on the first of each month. I have been provided with a copy of the Notice to end, the tenancy agreement and two correspondences from the husband to the landlord, and one correspondence from the applicant and the husband to the landlord.

The landlord testified that over the course of the tenancy the landlord has dealt with both the applicant and the husband in respect to matters of the tenancy. On occasions the husband has paid the rent or has communicated with the landlord on various matters. It is not in dispute that the husband has, in the very least, acted as an agent of the tenancy, and that both, the applicant and the husband were present when the Notice to end was received by them. The landlord testified that the Notice is valid.

The applicant argued that as her name is the one listed on the tenancy agreement as the primary tenant, the Notice should be set aside as invalid Notice to End, and that a new Notice be given effective May 31, 2011 – a date more agreeable to the applicant. The parties were canvassed if the notice could be amended to reflect a later effective date, but the landlord declined.

**Analysis**

It should be noted that the second page of the Notice to End in this matter specifically states: *An error in this Notice or an incorrect move- out date on this Notice does not make it invalid.*

Section 52 of the Act states as follows:

### Form and content of notice to end tenancy

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
  - (e) when given by a landlord, be in the approved form.

A Notice to End is in respect to ending of a tenancy – not the *specific* occupation by one of the tenants on the tenancy agreement. In this matter I find that the applicant and the husband are the tenant(s) and hold the same rights and obligations as tenant(s). I find that the husband is no less a qualifying tenant(s) and that both, the applicant and the husband received the Notice to End, and that either had a right to dispute the Notice. Under the circumstances, I find it is reasonable to amend the Notice, and the Notice is thus amended to reflect that it was served on the husband and the applicant.

On the preponderance of the evidence and on the balance of probabilities, **I find** the landlord issued a valid Notice to End for Landlord's Use of the Property and intends to provide the tenant with the prescribed compensation of the equivalent of one month's rent, to which they are entitled.

Therefore, the landlord's Notice to End dated February 27, 2011, with the effective date of April 30, 2011 is upheld. The landlord is entitled to an **Order of Possession**. The tenant's application effectively is **dismissed**. If the landlord serves the tenant with the Order of Possession, the tenancy will end in accordance with the Order.

Ending a tenancy is a serious matter, and the parties are not prevented from arriving at a different *mutually agreeable* end date to the tenancy.

### **Conclusion**

**I grant** an Order of Possession to the landlord **effective April 30, 2011**. The tenant must be served with this 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.

The tenant's application is **dismissed**, without leave to reapply.

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*.