

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy issued for Landlord's use and the recovery of the filing fee.

Both parties have attended the hearing by conference call and have given testimony. As both parties have attended and have confirmed receipt of the notice of hearing and the evidence submitted, I am satisfied that both parties have been properly served.

During the hearing the Landlord made an oral request for an order of possession to end the tenancy.

### Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the notice to end tenancy?

Is the Landlord entitled to an order of possession?

### Background, Evidence and Analysis

Both parties agreed that the Tenant was served with a 2 month notice to end tenancy for Landlord's use of property dated July 23, 2012 with a stated effective date of September 30, 2012. Although not provided, both parties agreed that the stated reason for the notice is "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."

The Tenant dispute the Landlord's notice stating that the Landlord will not comply with the notice in good faith. The Landlord disputes this stating that she intends to occupy the rental herself and has submitted documentary evidence that she has a Telus Services Hook Up ordered for October 1, 2012 and a reservation for a moving company on October 1, 2012 set. The Tenant has submitted a copy of an offer of agreement made by the Landlord to the Tenant to that states,

"In consideration of 1 1/2 months rent + damage deposit I agreed to return all copies of mail and any duplicate copies of mail and I agree to drop verbal threats of harassment in exchange for non rental of unit for six months."

The Tenant did not accept this offer and states that this is proof of the Landlord's intent to not comply with the notice. The Landlord argued that this was because of a deteriorating relationship with the Tenant that she asked the Tenant to agree to this.

Based upon the documentary and direct evidence of both parties, I find on a balance of probabilities that the Tenant has failed to establish a breach of the good faith requirement of the Landlord. I find that the Landlord is going to occupy the rental in good faith. The Landlord's notice dated July 23, 2012 is upheld. The Landlord has made an oral request for an order of possession and as such is granted an order of possession for the effective date of the notice on September 30, 2012.

Pursuant to Section 51 (2) of the Residential Tenancy Act, the Tenant is free to make application if the Landlord does not take steps to comply with the notice.

### Conclusion

The Tenant's application to cancel the notice to end tenancy for Landlord's use is dismissed. The notice dated July 23, 2012 is upheld. The Landlord is granted an order of possession for September 30, 2012.

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*.

Dated: August 28, 2012.

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Residential Tenancy Branch