



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: CNC, CNL, AS, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for the following orders:

- An order to cancel the notice to end tenancy for cause, pursuant to Section 47;
- An order to cancel the notice to end tenancy for landlord's use pursuant to Section 49;
- An order to authorize the tenant to change the locks to the rental unit pursuant to Section 65;
- An order to recover the filing fee for this application, pursuant to Section 72.

The tenant was served with two notices to end tenancy pursuant to Sections 47 and 49. Both notices were served in person to the tenant on November 27, 2008. The tenant has applied to dispute the notices on December 08, 2008.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues

Does the landlord have cause to end tenancy? Does the tenant have reason to be granted authorization to change the locks to the rental unit? Is the tenant entitled to the recovery of her filing fee?

Background and Evidence

The tenant testified that the tenancy started on March 01, 2006. The monthly rent is \$600.00 and the tenant paid a security deposit of \$300.00 on February 15, 2006.

The rental unit is located in the basement of the home and the landlord and his family occupy the upper level. The landlord was represented a relative who resides in the basement in a suite which is located adjacent to the dispute unit.

The notice to end tenancy for cause cites the following reasons:

- The tenant has significantly interfered with or unreasonably disturbed other occupants and the landlord;
- The tenant has seriously jeopardized the health or safety or lawful right of other occupants and the landlord;
- The tenant has put the landlord's property at significant risk;
- The tenant has engaged in illegal activity that has adversely affected the quiet enjoyment and jeopardized the right of the landlord and other occupants.

The landlord stated that tenant has caused noise disturbances on a regular basis starting at 4:00 am in the mornings, by singing loudly, screaming and uttering threats. The landlord stated that the tenant made racial and sexual comments against the landlord in the presence of his children. The landlord has submitted into evidence a tape, part of which was permitted to be played by the landlord during the conference call. The content of the tape included messages left on the landlord's answering machine and vocal recordings of the tenant as heard in the adjacent suite. The landlord stated that the recordings played during the hearing, were made at 4:11am and at 5:30am on different dates. During the playing of the recorded tape, I heard the tenant screaming obscenities, and singing loudly. The landlord has also submitted into evidence a copy of the text messages he received from the tenant which are very graphic in their racial and sexual content. The landlord stated that the tenant also played music or watched television early in the morning and has created noise disturbances which regularly disrupt the sleep of the adjacent suite occupant, forcing this occupant to sleep on a couch in the upper part of the house. The landlord stated that on occasion the noise was so loud that it can be heard upstairs too. The landlord has called the police on several occasions. The landlord also stated that the tenant smokes illegal substances in the suite and sometimes has a cat living with her in the

suite, despite the fact that pets were not permitted by the terms of the tenancy agreement.

The tenant stated that she suffered from night terrors and nightmares and is taking medication for this problem. The tenant stated that on September 14, 2008, the tenant had a bad dream and woke up frightened. The tenant acknowledged that this may have caused noise disturbance at 4:00am that morning. The tenant stated that the landlord started banging on the wall, yelling obscenities and then came to her door and continued banging. In the tenant's written submission regarding the same incident, the tenant stated that on that night the tenant woke up to use the washroom at 4:00am and then turned the television on "as always". The tenant stated that the tenant was verbally assaulted by the landlord when the landlord banged on the door and felt threatened and hence wants to have the locks changed. The tenant admitted that the tenant had sent the landlord derogatory text messages, but stated that the messages were in response to harassment from the landlord and that the messages have been altered by the landlord. Regarding the tape recordings, the tenant admitted that it was her voice but stated that they had been altered, as the landlord has advanced technological equipment with a capability to alter recordings. The tenant denied smoking illegal substances in the suite and admitted that she did have a pet in the suite from time to time.

Analysis

Based on the oral and written testimony of the landlord and tenant, I find that the tenant has significantly disturbed the landlord by the tenant's admitted disruptive behaviour in the early hours of the morning. I find that the text messages sent by the tenant to the landlord are extremely inappropriate, graphic in nature and include implied threats against the landlord's children, thus jeopardizing the safety of the landlord and his family. Pursuant to section 47(d) of the *Residential Tenancy Act*; the landlord may give notice to the tenant to end the tenancy if the tenant has significantly disturbed the landlord. Accordingly, the notice to end tenancy is upheld and the tenant's application to cancel the notice to end tenancy is dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), of the *Residential Tenancy Act*, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession effective two days after service on the tenant. 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.

Conclusion

The landlord is granted an order of possession, effective two days after service on the tenant. Accordingly, the tenant's application to cancel the notice to end tenancy pursuant to Section 49 and to change the locks is irrelevant and hence is dismissed. The tenant must bear the cost of filing this application.

Dated January 06, 2009.

Dispute Resolution Officer