



# **Dispute Resolution Services**

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

## **Decision**

**Dispute Codes:** CNC, FF

## **Introduction**

This hearing dealt with an application by the tenants for cancellation of the 1 month notice to end tenancy for cause, and recovery of the filing fee for this application. Those participating in the hearing included the two tenants, landlord's counsel and witnesses for the landlord. All those who participated in the hearing gave affirmed testimony. Landlord's counsel requested an order of possession in the event the tenants' application fails.

## **Issues to be Decided**

- Whether the tenants are entitled to cancellation of the 1 month notice to end tenancy
- Whether the landlord is entitled to an order of possession

## **Background and Evidence**

The housing complex which includes the rental unit was opened in 1976 as affordable housing for seniors on a low income. The tenants have been residents since August 2002. Verbal concerns about the tenants have previously been raised with the landlord by caretakers and other residents. However, beginning early in 2008 some residents began to put their concerns in writing.

The landlord submitted into evidence a copy of the 1 month notice dated December 27, 2008. Reasons identified on the notice in support of its issuance are:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord

During the hearing, counsel for the landlord called on witnesses to speak to their experiences with the tenants. Without exception, the principal concern of the witnesses was in regard to the behaviours of the wife. Witnesses included the current Board chair who has been a member of the Board for ten years. He described a form of “elder abuse” on the part of this particular tenant in her exercise of power and control over other residents. He described how some residents use alternate building entrances and exits to avoid this tenant. He stated that potential residents have expressed trepidation about renting in the complex as a result of what they have heard about this tenant. Based on what he has observed over time, and in consideration of the numerous times the landlord has brought concerns to the attention of the tenant, his view is that no constructive and lasting behavioural changes are ever likely to be made by this tenant.

Recurring themes in witness testimony included, but were not limited to reports that the tenant is domineering and has regular run-ins with other residents; that interactions between other residents and the tenant give rise to feelings of anxiety in others, and that some residents are afraid to participate in group settings where the tenant is present. A social worker with no direct dealings with the tenant spoke to the anxiety the tenant’s demeanour and behaviour provokes in a particular resident she works with.

The tenant queried who “got to” the residents who provided testimony during the hearing. She was dismayed by the testimony and stated that she had variously baked and cooked for the residents. She also made generally disparaging comments about Board members.

### **Analysis**

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with a 1 month notice to end tenancy for cause dated December 27, 2008.

The date identified on the notice by when the tenants must vacate the unit is January 31, 2009. The tenants disputed the notice within 10 days after its receipt by filing an application for dispute resolution.

Section 47 of the *Act* speaks to **Landlord's notice: cause**. In relation to the circumstances of this dispute, section 47(1)(d)(i)(ii) provides as follows:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or...

Black's Law Dictionary (Black's) provides that at common law, the covenant of quiet enjoyment "promis(es) that the tenant...shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord – tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interference with his or her tenancy." It is commonly accepted that unreasonable and recurring conduct is a breach of the covenant of quiet enjoyment.

Black's defines **reasonable**, in part, as:

Fair, proper, just, moderate, suitable under the circumstances.

Black's defines **unreasonable**, in part, as:

Not reasonable; immoderate; exorbitant.

Residential Tenancy Policy Guideline # 6 addresses Right to Quiet Enjoyment and states, in part:

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form the basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include [but is not limited to] serious examples of:

- persecution and intimidation

Testimony given by the landlord's witnesses was clear, credible and consistent. By way of their responses to the testimony, I am persuaded that the tenants have limited or no insight into the effect of their behaviours on others. In spite of the landlord's efforts to inform the tenants of the negative impact of some specific behaviours on other residents, no lasting changes in the tenants' behaviour have resulted.

Therefore, after careful consideration of the documentary evidence and testimony of the parties, I find that the tenants' conduct is sufficiently unreasonable and recurring to warrant an end to tenancy. Specifically, I find that their behaviour creates for other residents something that exceeds temporary discomfort or inconvenience and that, in sum, it forms the basis for breach of the covenant of quiet enjoyment.

Accordingly, I dismiss the tenants' application for cancellation of the 1 month notice to end tenancy for cause, and I find that the landlord is entitled to an order of possession. Further, I dismiss the tenants' application for recovery of the filing fee.

### **Conclusion**

I hereby issue an order of possession in favour of the landlord effective on or before **1:00 pm, Saturday, February 28, 2009**. This order must be served on the tenants. Should the tenants 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.

DATE: February 3, 2009

---

Dispute Resolution Officer