



# Dispute Resolution Services

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

## **Decision**

**Dispute Codes:** OPL, MNDC, FF

### **Introduction**

This hearing dealt with two applications: 1) from the landlord for an order of possession and recovery of the filing fee; 2) from the tenant for a monetary order as compensation for loss of quiet enjoyment, for certain orders against the landlord, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

At the outset of the hearing the tenant requested an adjournment on the basis of feeling temporarily unwell. In view of the long standing difficulties between the parties and the landlord's desire for closure to the dispute, the landlord objected to the tenant's request. To date, two notices to end tenancy have been issued by the landlord: a 1 month notice to end tenancy for cause, and a 2 month notice to end tenancy for landlord's use of property.

The tenant's request for an adjournment was denied. As the tenant did not dispute the landlord's 2 month notice to end tenancy, the proceedings focused on the 2 month notice as opposed to the 1 month notice. Additionally, during the hearing the parties addressed the issue of alleged breaches of the tenant's right to quiet enjoyment and the landlord's concern about monies still owed by the tenant for utilities. In view of all of the above, the tenant's application for cancellation of notice to end tenancy was set aside.

### **Issues to be Decided**

- Whether the landlord is entitled to an order of possession
- Whether the tenant is entitled to orders against the landlord and / or a monetary order under the Act

## **Background and Evidence**

Pursuant to a written residential tenancy agreement, the term of tenancy is from December 1, 2008 to December 1, 2009. Rent in the amount of \$2,400.00 was payable in advance on the first day of each month, and a security deposit of \$1,200.00 was collected on November 18, 2008. The tenancy agreement provides that the tenant will pay a 2/3 share of the monthly cost of gas and hydro.

While the landlord's application did not include a request for a monetary order, the landlord testified that the tenant is currently in arrears with payment of utilities:

Gas: period January 6 to February 5, 2009. Total cost: \$216.91.

Tenant's 2/3 share: \$144.46

Gas: period February 5 to March 5, 2009. Total cost: \$302.15.

Tenant's 2/3 share: \$201.23.

Hydro: period December 6 to February 5, 2009. Total cost: \$161.22.

Tenant's 2/3 share: \$107.37.

The landlord testified that a further invoice for the cost of hydro during this tenancy is still anticipated. In the meantime, pursuant to the above, the landlord's calculation of the total cost of utilities still unpaid by the tenant is \$453.06.

As a result of the landlord's concerns about the conduct and behaviour of the tenant, he issued a 1 month notice to end tenancy for cause, a copy of which was submitted into evidence. Reasons identified on the notice for its issuance are as follows:

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
- put the landlord's property at significant risk

Tenant has engaged in illegal activity that has, or is likely to:

- damage the landlord's property
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- jeopardize a lawful right or interest of another occupant or the landlord

The notice is dated January 30, 2009 and the tenant did not dispute the landlord's testimony that it was served in person on her on that same date.

A copy of the 2 month notice to end tenancy for landlord's use of property dated January 27, 2009 was also submitted into evidence. The tenant did not dispute that this notice was served personally on her on that same date. The reason identified on the notice for its issuance is as follows:

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 landlord testified that he himself will be moving into the unit. The tenant did not dispute the landlord's good faith in issuing this notice and confirmed that, pursuant to the notice, it is her intention to vacate the unit on March 31, 2009. The landlord acknowledged the statutory requirement that one month's rent be waived in the case of a 2 month notice. Therefore the landlord acknowledged that no rent is due for the month of March 2009.

Included in her evidence the tenant submitted a detailed breakdown of particular events during the tenancy which she claims breached her right to quiet enjoyment or were

tantamount to the landlord's restriction of certain services. For each event she assigned a monetary value and has requested a monetary order as compensation.

### **Analysis**

In order to decide the issues in this dispute, I have carefully weighed the testimony and documentary evidence presented by the parties. A test for assessing credibility is set out in *Faryna v. Chorny* [1952] 2 D.L.R. 354 (BCCA). In part, the test reads as follows:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject the story to an examination of its consistency with the probabilities that surround the story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of probabilities which a practical and informed person would readily recognize in that place and those circumstances....(pp. 356-357).

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 1 month notice to end tenancy for cause and a 2 month notice to end tenancy for landlord's use of property. As earlier noted, the tenant does not dispute the landlord's grounds for issuance of the 2 month notice and stated that she plans to vacate the unit at the end of March 2009. Accordingly, I find that the landlord is entitled to an order of possession to be effective no later than 1:00 p.m., Wednesday, March 31, 2009.

Pursuant to section 51 of the Act, the tenant is entitled to the equivalent of one month's free rent. The parties agree that this entitlement will be applied to rent for the month of March 2009.

For the information of both parties, attention is drawn to Division 5 of the Act which addresses certain provisions **At the End of a Tenancy**, in particular as follows:

Section 35 Condition inspection: end of tenancy

Section 36 Consequences for tenant and landlord if report requirements not met

Section 37 Leaving the rental unit at the end of a tenancy

Section 38 Return of security deposit and pet damage deposit

Section 39 Landlord may retain deposits if forwarding address not provided

The above statutory provisions in addition to Fact Sheets and related forms are accessible on the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

The landlord indicated that he may apply for dispute resolution following an end to this tenancy in order to seek a monetary order for unpaid utilities, as well as costs associated with repairs that may be necessary to any damage found to the unit. The landlord is also free to apply to retain a portion of the tenant's security deposit in partial satisfaction of any such claim.

Related to the tenant's allegations around problems she states she encountered in the unit, section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**. Further, section 29 of the Act addresses **Landlord's right to enter rental unit restricted**, and states, in part:

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (f) an emergency exists and the entry is necessary to protect life or property.

Based in part on the extensive documentary evidence submitted by the parties, I am satisfied that the landlord responded in a timely manner to concerns about the unit that

were raised by the tenant. Further, I am persuaded on a balance of probabilities that on occasions when the landlord entered the unit he either had the tenant's permission or he was satisfied that an emergency existed and entry was necessary to protect the property.

For information, the parties are referred to Residential Tenancy Policy Guideline #6 which addresses **Right to Quiet Enjoyment**. Under the heading "Basis for a finding of breach of quiet enjoyment," this guideline states in part:

Historically, on the case law, in order to prove an action for breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such interference might include serious examples of:

- entering the rental premises frequently, or without notice or permission;
- unreasonable and ongoing noise;
- persecution and intimidation;
- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;

- intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,
- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

Having reviewed the evidence which includes detailed documentation, having paid careful attention to the demeanour of the parties during the hearing and to the probabilities that surround the circumstances of this dispute, I find no merit to any of the tenant's allegations that her right to quiet enjoyment was breached. Accordingly, I dismiss all aspects of the tenant's claim for a monetary order as compensation in this regard.

In view of the information set out above and in light of the impending end to this tenancy, the tenant's application for various orders against the landlord, which are included in her original application, are hereby set aside.

### **Conclusion**

I hereby issue an order of possession in favour of the landlord effective not later than **1:00 p.m., Tuesday, March 31, 2009**. This order must be served 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.

I hereby dismiss the tenant's claim for compensation for alleged breach of the covenant of quiet enjoyment and for certain orders to be issued against the landlord.

I hereby also dismiss the applications from the parties for recovery of their respective filing fees.

DATE: March 25, 2009

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Dispute Resolution Officer