

## **DECISION AND REASONS**

**Dispute Code:** CNC

### **Introduction**

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

1. To cancel a Notice to End Tenancy given for unpaid rent or utilities pursuant to Section 46; and
2. An order to recover the filing fee paid for this application pursuant to Section 72.

I accept that the landlord was properly served with the tenant's Application for Dispute Resolution hearing package.

Both parties appeared and gave evidence under oath.

### **Background, Analysis and Findings**

The landlord testified that she issued the Notice to End Tenancy for Cause based on the complaints of two female tenants who live directly above this tenant. One of the female tenants appeared as witness. She testified that she and her roommate have been harassed by this tenant since November 2007. Eventually, on January 6 the tenants filed a complaint with the police who advised them to talk to their landlord about evicting this tenant. Upon hearing of the situation the landlord issued a one month Notice to End Tenancy effective February 28, 2009.

The witness, a tenant in the subject rental property, testified that she shares a rental unit with another woman and they are both students. The witness testified that on November 1, 2008 they found a letter at their rental unit signed the applicant/tenant. The letter was submitted in evidence. In the letter the applicant makes lewd and inappropriate suggestions. The witness testified that she and her roommate approached the applicant to discuss the letter and he indicated he did not wish to talk to them. The witness says they insisted and a discussion ensued in which the applicant advised did not mean any offence by the letter but was frustrated because he could

hear their footsteps above him like “elephants” all the time. He said he felt that the noise was deliberate. The witness said he did not seem to understand why the letter scared them nor did he acknowledge how inappropriate it was, although he did apologize.

About a week later a series of letters appeared under the witness’s door. These letters appeared to contain song lyrics translated from Croatian to English. These letters were also submitted in evidence. The witness says that the applicant approached her and asked if she liked “his beautiful songs” describing them as a peace offering. He said he wanted to become friends and asked to be invited in. When the witness declined to invite him in saying she was studying the applicant said she should not study all the time and he began to describe a relaxation technique he was working on involving “energy” and “oscillations”. The witness says the applicant asked her to be a test subject for his technique. The witness said she began to feel more frightened of the applicant and irritated by him. She told him she wasn’t interested and closed the door. The witness testified that the applicant began trying to attract their attention by throwing items, such as pebbles, pennies or snowballs, at their window. In one case when the witness went to the window the applicant was outside her window asking if she performed rituals at night because he hears a rhythmic tapping that begins when he lies down for bed. The witness testified that the applicant continued to do unusual things; in one case the witness arrived home to find a package wrapped with duct tape at her window. The package contained a gold necklace. At this point the tenants contact the landlord and the police. The police attended and spoke with the applicant advising him to stay away from these tenants. Still, the witness says she arrived home to find helium balloons floating outside her apartment window tied to strings coming out of the applicant’s apartment. The witness says that she and her roommate feel very uncomfortable by this tenant’s actions and they reported the activities to the landlord. The landlord testified that she brought this application to protect these tenants.

The applicant says that the witness/tenants walk back and forth all day long. He says that he thought this activity was as a result of frustration and that is why he sent the letter submitted into evidence in which he set out his thoughts on how to relieve frustration. The applicant says that after he sent the letter the tenants appeared at his

door like “cowboys” yelling at him. He says he tried to shut his door on them but they put their foot in the door and he had to allow them in. The applicant testified that the witnesses followed him into his apartment where they discussed the matter. The applicant says that he believed the conversation ended well and that they would all be able to be friends. The applicant says he sent the lyrics to the tenants because he wished to develop the friendship further. With respect to throwing pebbles or pennies at their window, the applicant says the tenants were adamant they did not want him to come to their door again so he tried to gain their attention by throwing items at their window. With respect to the balloons the applicant says it was Valentines Day and he was celebrating the day by flying the balloons outside the tenants’ window. The applicant says he was excited by the snowfall and threw snowballs at the tenants’ window to encourage them to come outside and enjoy the snow. The tenant says he now knows that his actions are wrong but says he had no ill-intentions. He says that the witness tenants have been abusive to him.

## **Findings**

The landlord has issued a Notice to End Tenancy pursuant to Section 47 alleging that 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

The evidence of the parties is very similar. The applicant tenant does not deny that he sent the letters submitted in evidence and that he has conducted himself as described by the tenant witness. The issue seems to be that the applicant tenant does not comprehend how his actions are disturbing the witness tenants or at least he has only recently come to the realization that his actions are disturbing, unwanted and unnerving. Whatever the case, I find that due to the conduct of the tenant the landlord was correct in issuing a Notice to End Tenancy for Cause because the applicant has significantly interfered with or unreasonably disturbed other occupants of the residential property

and has jeopardized the lawful rights of other tenants, such as their right to quiet enjoyment of the premises.

I therefore dismiss the tenant's application to cancel the Notice to End Tenancy with the effect that this tenancy ended on the effective date set out on that Notice, that is, February 28, 2009.

As the applicant's claim has been dismissed he is not entitled to recover the filing fee he paid for this application.

At the hearing of this matter the landlord requested an Order of Possession. Having dismissed the tenant's application to cancel the Notice to End Tenancy I will therefore issue the Order of Possession.

The evidence of both the landlord and the applicant is that the tenant was served with the Notice to End Tenancy for cause on February 1, 2008, as the tenant is entitled to one full month's notice the earliest date that this Notice can be effective is now March 31, 2009. I will therefore issue the Order of Possession effective March 31, 2009.

## **Conclusion**

The landlord is provided with a formal copy of an Order of Possession. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.