

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for cause.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord by the Male Tenant on May 18, 2009 at the Landlord's office.

The Landlord and Tenants appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Are the Tenants entitled to an Order to cancel the 1 Month Notice to End Tenancy for Cause pursuant to Section 47(4) of the *Residential Tenancy Act*?

### Background and Evidence

The month to month tenancy began December 18, 2007 with the current monthly rent due on the 1<sup>st</sup> of each month in the amount of \$850.00. The Tenants paid a security deposit of \$425.00 on December 17, 2007. The rental unit is located in an apartment building with 188 separate suites.

The Landlord testified that the Tenants have been engaged in arguments with each other which then cause disturbances to other tenants and in many cases have required the Landlord to get involved. The Landlord testified to the following:

October 2008 - The Landlord received a complaint from another tenant that these two Tenants were fighting and that the Landlord spoke to the Tenants about the complaint and the Male Tenant responded to the Landlord by stating that they do not fight.

January 21, 2009 – The Landlord testified that the Female Tenant came to the Landlord's office requesting that the Landlord open the Tenant's door as the Male Tenant had locked out the Female Tenant. The Landlord stated that when she attended the rental unit the Male Tenant had blocked the door to prevent the Landlord and Female Tenant access. The Landlord advised that it took about 20 minutes to negotiate with the Male Tenant to allow the Female Tenant to gain access.

March 25, 2009 – The Landlord advised that during the evening on this date she was in the lobby and that the Female Tenant approached her requesting that the Landlord assist her to gain access to her rental unit again. The Landlord testified that the police were eventually called as a result of this argument and that the Landlord was involved for over an hour in assisting the Female Tenant and Police.

March 25, 2009 – The Landlord posted a "Breach Letter" on the Tenants' door. The Landlord stated that she later had a conversation with the Female Tenant about the Breach Letter reinforcing to the Female Tenant that if they cause one more disturbance in the building then the Tenants would be issued a Notice to End Tenancy.

May 7, 2009 – The Landlord stated that she was outside by the garbage dumpster when she heard the two Tenants fighting again. The Landlord advised that she was more than 100 yards away from the Tenants' rental unit and she could hear them yelling, screaming, swearing at each other, and causing a huge disturbance. The Landlord stated that she knocked on the Tenants' door but that they did not answer so the Landlord went back to her office and requested that the head office issue the Tenants a Notice to End their tenancy.

The landlord testified that she finds it very uncomfortable to be around the Tenants when they are fighting like this and that these arguments take up a lot of her time.

The Male Tenant testified that he does yell, curse, and swear at his partner when they fight. The Male Tenant stated "that's what people do; they fight and argue that's what everybody does." The Male Tenant advised that the argument that happened on May 7, 2009 only lasted for 5 minutes and that the Landlord should not have issued the 1 Month Notice to End Tenancy because of a 5 minute argument.

The Male Tenant states that since the 1 Month Notice to End Tenancy has been issued the Landlord has been harassing them. The Male Tenant advised that the apartment is full of cockroaches, bedbugs, and mice and that the Landlords should not be allowed to rent these places out.

The Male Tenant stated that he had a meeting with the Landlord on May 19, 2009 at 3:00 p.m. and that during this meeting the Landlord harassed him telling him he would have to be out in 2 days once the Landlord is given an Order.

The Landlord argued that she has not met with either the Male or Female Tenant since the Tenants served her with the Notice of Dispute Resolution Hearing and that she has not been harassing the Tenants.

The Female Tenant initially stated that the arguments that the Landlord referred to did not take place and that she did not go to the Landlord to gain access to the rental unit during arguments with her partner. The Female Tenant later changed her testimony and stated that the Landlord did assist her to gain access to the rental unit and that while her and her partner do fight, the fight which occurred on May 7, 2009 only lasted for about 5 minutes and then they stopped.

The Female Tenant claimed that she never saw the "Breach Letter" and that they do not have a copy of this letter.

The Male Tenant claims that he does not have a copy of the Breach Letter and later testified that he was aware of the conditions stated in the breach letter as he knew that they would be issued a notice to cancel the tenancy if they caused another disturbance.

### Analysis

A significant factor in my considerations is the credibility of the testimony before me. In assessing the credibility of the Tenants and the Landlord, I am guided by the following:

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

*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 his story to an examination of its consistency with the probabilities that surround the current 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 the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

In the circumstances before me, I find the version of events provided by the Landlord to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the Landlord over the Tenants.

**Order of Possession** - I find that the Tenants have failed to support their request to cancel a Notice to End Tenancy and I have found that the Tenants have significantly interfered with or unreasonably disturbed another occupant and the Landlord.

The Landlord requested an Order of Possession effective June 30, 2009 (the effective date on the 1 Month Notice to End Tenancy) and I find that the landlord has met the requirements of the *Act* under Section 55(1)(a).

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **June 30, 2009 at 1:00 p.m.** This order must be served on the Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

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: June 23, 2009.

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Dispute Resolution Officer