

## **DECISION AND REASONS**

**Dispute Codes:** CNC, MT

### **Introduction**

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. The tenant also applied for more time to do so. However, the tenant applied within the specified time frame and therefore the portion of his application to allow more time to make application is moot and accordingly dismissed. This hearing only dealt with the tenant's application to set aside the notice to end tenancy.

At the start of the hearing, the tenant requested that this hearing be adjourned to a later date due to a separate police matter that he was under investigation for. Since the purpose for which the adjournment was sought would not contribute to and was not related to the resolution of the matter at hand, I denied the tenant's request for an adjournment and the hearing continued on.

Both parties attended the hearing and had opportunity to be heard. At the hearing the landlord made an oral request for an order of possession in the event that the tenant's application was not successful.

### **Issue to be Decided**

Does the landlord have grounds to end this tenancy?

### **Background and Evidence**

The tenancy began on July 01, 2009 for a fixed term ending on June 30, 2010. The rent is \$1,200.00, payable on the first of the month. The tenancy agreement has an addendum attached to it which contains a clause that states "*The tenant agrees that no smoking is permitted in the rental unit at any time.*" This addendum is signed by both tenants.

Shortly after the tenancy began, the landlord started receiving numerous complaints from the other occupants of the residential complex regarding the tenants smoking inside the rental unit. The complaints described the problem of the presence of smoke in the hallway that entered the units occupied by other tenants. The landlord filed five letters of

complaint from the other residents written in the period of July to September. One complainant stated that her health is seriously jeopardized by the smoke as she suffers from asthma. The landlord also filed a letter from a constable who stated that he visited the rental unit on three separate occasions and found the tenant smoking inside the unit on all three occasions.

The landlord stated that the tenant was given several verbal and written warnings including a notice to end tenancy on July 24, 2009 which was subsequently withdrawn and a letter on September 10, 2009. On September 17, 2009, the landlord served the tenant with a notice to end tenancy for cause.

The notice cites the following reasons for ending the tenancy: The tenant has significantly interfered with or unreasonably disturbed another occupant, has put the landlord's property at significant risk and has breached a material term of the tenancy agreement.

The tenant stated that neither he nor his partner smoke inside the unit and that the notice to end tenancy should be set aside.

### **Analysis**

In order to support the notice to end tenancy, the landlord must prove that the tenant seriously jeopardized the health and safety of another occupant and/or put the landlord's property at significant risk and/or breached a material term of the tenancy agreement.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case the landlord provided adequate evidence to support her allegation that the tenant smoked inside the rental unit. The landlord met her burden of proof by way of statements from other occupants and a police officer who witnessed the tenant smoking inside the unit on three separate occasions.

Therefore, I find that on a balance of probabilities, the tenant smoked inside the rental

unit thereby breaching a term of the tenancy agreement, jeopardizing the health of other occupants and putting the landlord's property at risk of smoke damage. I find that the landlord has cause to end the tenancy and I uphold the notice to end tenancy.

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), 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. 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 notice to end tenancy is upheld and I grant the landlord an order of possession effective on or before 1:00 p.m. on **November 30, 2009.**

Dated November 04, 2009.

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