

## **Decision**

**Dispute Codes:** OPC, CNC, OLC, LRE, FF

### **Introduction**

This hearing dealt with two applications: 1) from the landlords for an order of possession; 2) from the tenant for cancellation of the 1 month notice to end tenancy for cause, an order instructing the landlords to comply with the Act, an order suspending or setting conditions on the landlords' right to enter the unit, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether either party is entitled to any or all of the above under the Act

### **Background and Evidence**

Pursuant to a written residential tenancy agreement, the year - long fixed term of tenancy began on or about February 1, 2007. Thereafter, tenancy has continued on a month-to-month basis. Currently, rent in the amount of \$745.00 is payable in advance on the first day of each month. A security deposit of \$360.00 was collected on or about February 1, 2007.

The landlord issued a 1 month notice to end tenancy for cause dated October 15, 2009. The notice was served by posting on the tenant's door on that same date. A copy of the notice was submitted into evidence. Reasons shown 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

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

**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 tenant disputed the notice by filing an application for dispute resolution on October 16, 2009.

During the hearing the landlords' agent withdrew the application for an order of possession on the basis of the last 2 reasons identified above [bold emphasis added for purposes of clarity]. The landlords' agent stated that inclusion of these reasons was an inadvertent error and that there is no concern on the part of the landlords that the tenant is engaged in any "illegal activity."

Documentation submitted by the landlords includes letters written by the landlords' agent (who, herself is a tenant) in addition to several other tenants. In these letters, the writers describe the tenant's behaviours variously as "aggressive," "threatening," "crazy," "harassing," "bizarre and unexplainable," "out of control," and so on. Some annoyance on the part of other tenants arises out of calls the tenant acknowledges having made to police in regard to cars parked illegally at the front of the building. The landlords' agent acknowledged that some vehicles have been parked illegally, and in some cases vehicles have been ticketed by police.

The tenant identified breaches to her right to quiet enjoyment from cars revving their engines outside her unit, and vehicle lights shining into the windows of her unit. While she acknowledges having made reports to police about cars parked illegally, she denies that her conduct or behaviours toward other tenants have been inappropriate.

## **Analysis**

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 dated October 15, 2009. Subsequently, the tenant filed an application for dispute resolution on October 16, 2009, which is within the 10 day period available to a tenant to dispute the notice.

Section 47 of the Act addresses **Landlord's notice: cause** and provides in part, 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....

I have carefully considered the testimony and documentary evidence submitted by the parties. The weight I am able to give to letters submitted into evidence by the landlords, which have been written by other tenants, is limited. With the exception of the landlords' agent, none of the tenants who wrote these letters were present at the hearing to testify.

I acknowledge there are tensions in the relationship between the landlords' agent and the tenant. I also acknowledge the difficulties for the landlords' agent which arise out of the requirement that she respond to concerns from other residents about the tenant's behaviour. Indeed, the responsibility of the landlords includes ensuring the right to quiet enjoyment of all tenants in the building.

The onus of proof on any application is on the applicant, and the standard of proof is on the balance of probabilities. I find that the landlords have not met the required standard of proof in establishing cause in support of the issuance of an order of possession. Specifically, I am unable to conclude that there is a pattern of frequent, repeated and allegedly problematic behaviours and / or conduct on the part of the tenant. On a balance of probabilities I find there is insufficient evidence to support the proposition that the tenant has “significantly interfered with or unreasonably disturbed another occupant or the landlord” or “seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.” I therefore set aside the landlord’s notice to end tenancy, with the result that the tenancy continues in full force and effect.

It is hoped that as a result of the landlords’ application and exchanges between the parties during the hearing, there will be a heightened awareness of each party to the other’s needs and concerns.

Finally, the attention of the parties is drawn to the provisions set out in section 28 of the Act, **Protection of tenant’s right to quiet enjoyment**, and section 29 of the Act, **Landlord’s right to enter rental unit restricted**. The full text of the legislation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

### **Conclusion**

Pursuant to all of the above, I hereby dismiss the landlords’ application for an order of possession. The tenancy therefore continues in full force and effect.

As the tenant has succeeded in her application, I find that the tenant is entitled to recovery of the \$50.00 filing fee. I therefore order that the tenant may withhold **\$50.00** from the next regular payment of monthly rent for this purpose.

DATE: December 3, 2009

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Dispute Resolution Officer