

## **DECISION**

### **Dispute Codes:**

CNC, MNDC, OLC, RP, LAT, FF

### **Introduction**

This is the Tenants' application to cancel Notice to End Tenancy for Cause; a Monetary Order for compensation for damage or loss; an Order that the Landlord comply with the Act; an Order for repairs of the rental unit; an Order authorizing the Tenants to change the locks on the rental unit; and to recover the cost of the filing fee from the Landlord.

I reviewed the evidence provided prior to the Hearing. All parties gave affirmed testimony and the Hearing proceeded on its merits.

### **Issues to be Decided**

- Should the Notice to End Tenancy issued November 27, 2009, be cancelled or upheld?
- Are the Tenants entitled to a monetary award for loss of peaceful enjoyment of the rental unit?
- Should the Landlord be ordered to comply with the Act and to make repairs to the rental unit?
- Should the Tenants be authorized to place a dead bolt on the rental unit's door?
- Is the Tenant entitled to recover the cost of the filing fee from the Landlord?

### **Preliminary Issue**

The Tenants submitted that the evidence provided by the Landlord should not be considered, as the Tenants did not receive the evidence until January 4, 2010. The Tenants testified that the Landlord placed the evidence package in their mail box at 9:35 a.m., December 31, 2008. The Tenants were away until January 4, 2010 and did not see it until they returned.

Evidence must be provided *at least* 5 clear days prior to the date of the Hearing. The date of service; the date of the Hearing; and any weekends or statutory holidays are not included in calculating five clear days. The Landlord posted the evidence in the Tenant's mail box on December 31, 2009. Therefore, the Tenants are deemed to have received the evidence on the third day after posting, or January 3, 2009. This is within the time allowed for serving evidence and that Landlord's evidence will be considered accordingly.

### **Background and Evidence**

There is a written tenancy agreement in place, a copy of which was entered in evidence. The tenancy is a one year lease, commencing April 1, 2009, with the option to continue on a month-to-month basis after March 31, 2010. Monthly rent is \$1,250.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$625.00 on March 15, 2009, and a pet deposit for their cat on April 1, 2009, in the amount of \$250.00. The rental unit is a condominium on the second floor of a building. The Landlord lives in the condominium beside the rental unit, and her daughter has a bedroom on the first floor of the rental property. The Landlord, her daughter, and the Tenants share a common area consisting of stairs and a hallway.

The Landlord issued a One Month Notice to End Tenancy for Cause on November 27, 2009, and served the Tenants with the Notice by posting it on their door the same day. A copy of the Notice was entered in evidence. The Notice alleges the following reasons for ending the tenancy:

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; and
- put the landlord's property at significant risk.

The Landlord testified that there were 12 separate incidents between August, 2009 and December, 2009, where the male Tenant unreasonably interfered with or unreasonably disturbed the Landlord and/or her daughter. For example:

- Between August 24 and 27, the male Tenant banged loudly on the shared wall between their condos and yelled at the Landlord and her daughter from his rental unit. The Tenants played music or had the TV turned up extremely loudly from 10:00 to 11:30 at night. The Landlord alleged the Tenants moved her personal property in the common area (ceramic monkeys were turned around, and when the Landlord put them back in place, they were turned around again. This continued over the period of a few days).
- On September 11, 2009, loud music was played until midnight, disturbing the Landlord and her daughter.
- On September 29, 2009, The Landlord had inadvertently left the keys in the lock to the front door leading into the common area. The male Tenant found the keys in the door, and taunted the Landlord by holding her house keys above his head and dangling them, refusing to give them back.
- On October 3, 2009, the male Tenant shouted from his balcony at the Landlord's friend, who was removing a railing from the rental property in preparation for painting. The Landlord and her friend were also cleaning the gutters and doing prep work for the painters. They were on the roof of the rental property, which house skylights into the Tenant's home.
- The Tenants had asked for minor repairs to the skylight, and the Landlord had provided notice on October 2, 2009, that she would be entering the Tenant's home on October 7<sup>th</sup> or 8<sup>th</sup>, in order to attend to the repairs. The Tenants denied the Landlords access.
- From 10:00 p.m. until midnight on October 28 and at 6:15 a.m. on October 29, 2009, the Tenants were loudly running up and down the shared stairway.
- Between 10:30 and 11:00 p.m., on November 9, 2009, the volume on the television in the Tenants' home was so loud that the Landlord's daughter could clearly hear the dialog from every room in the Landlord's home. This happened again late in the evenings of November 20, and December 15, 2009.

The Landlord's male Witness, who is the friend who was removing the railing, gave testimony regarding the male Tenant's demeanour on October 3, 2009, and stated that the Tenant was rude, abrupt and confrontational. The Witness was questioned by the male Tenant, and agreed that the male Tenant apologized and that they had a fairly decent conversation afterwards.

The Landlord's female Witness is the Landlord's daughter, who lives with the Landlord and has a bedroom on the first floor of the rental property. She testified that she was in fear of the male Tenant because of his yelling and aggressive behavior towards her and her mom. The female Tenant testified that the Tenants were up to mischief on the rental property by willfully damaging a wicker planter, some pots and a garden hose. She stated that the Tenants had complained about her dog barking, but the CRD sent an officer to their house and no warning was given because the officer did not think it warranted it.

The male Tenant stated that the wicker port was damaged due to weathering, and referred to the photographs provided in evidence. He stated that the garden hose was often left out by the Landlord's daughter for up to two weeks at a time, and that it was a tripping hazard and could have been driven over by the Landlord or the Tenant inadvertently. The male Tenant stated that he turned the Landlord's ceramic monkeys one-quarter turn, once only, because they were on a table in the common area. The male Tenant testified that the table was in the way of his ingress and egress into his home and he was frustrated.

The Tenants testified that the Landlord's and her Witnesses' version of events was exaggerated, false and offensive. The male Tenant stated that everything was fine at the start of the tenancy and that the problems started in August when the Tenants put some concerns in writing. He stated that the Landlord is not handling the tenancy in a professional manner and is choosing to create issues rather than handle bona fide problems.

The male Tenant testified that the Landlord has never advised the Tenants that their TV or music was too loud. He stated that the Tenants can also hear the Landlord and her daughter because the walls are so thin and are not properly insulated for sound.

The Tenants want the skylight repaired. The Tenants testified that the front door to the common area is occasionally left unlocked by the Landlord or her daughter. They submitted that a locked door is insufficient security for their home and therefore they would like the Landlord to install a deadbolt. The Landlord has refused to do so.

The male Tenant testified that the Landlord did not give them sufficient notice of her inspections. The written notice was posted to their door, for access the next day. When the Tenants advised the Landlord that notice in this manner is deemed to be effective 3 days after posting, the Landlord replied that it was her property.

The Tenants testified that the Landlord's dog was constantly barking and effecting their quiet enjoyment of the rental unit. The Tenants provided a log into evidence, indicating the dates, times, duration and reasons for the dog barking. The Tenants asked for a total rent abatement for three months due to the loss of quiet enjoyment.

### **Analysis**

It is very clear that both parties are dissatisfied with this tenancy. However, the onus is on the Landlord to prove that there is sufficient cause to end this tenancy. Based on the testimony of both parties, I find no evidence that the Tenants have seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; or put the Landlord's property at significant risk. Furthermore, there is insufficient evidence provided by the Landlord to prove her claim that the Tenants have significantly interfered with or unreasonably disturbed another occupant or the Landlord. Therefore, the Notice to End Tenancy for Cause issued November 27, 2009, is cancelled and the tenancy remains in full force and effect.

The Tenants provided a log of the incidents when the Landlord's dog was barking. The Landlord provided a copy of a Barking Notice from the CRD, outlining the Tenant's

complaint and the Animal Control Bylaw. The Animal Control Bylaw states that there is no tolerance for barking between the hours of 9:00 p.m. to 7:00 a.m. the next day. It also states that dogs are expected to bark during daytime hours, but excessive barking is not permitted. Generally speaking, excessive barking is frequent and persistent and disturbing to the neighbourhood. The Tenants' barking log indicates 70 instances of barking between August 24, 2009, and November 28, 2009. However, with very few exceptions, the barking occurred during daytime hours and continued for less than 2 minutes each occurrence. No other testimony was provided from other neighbours who may have been disturbed by the barking. The Tenants were aware that the Landlord had a dog when they agreed to rent the rental unit. I find that the Tenants have not provided sufficient evidence to support a claim that the barking dog has disturbed them sufficiently to award any claim, let alone a claim for total abatement of their rent for three months.

The Landlord is advised that 24 hours written notice is deemed to be received 3 days after posting on the Tenants door, and that in the future, should she decide to use this method of service, she should take this into consideration. The Landlord would be well advised to attend to the skylight in her own best interest as the property owner.

I decline to make an Order that the Landlord install a deadbolt on the Tenants' door, as I find the lock to be sufficient.

The Tenants have been successful in their application to set aside the Notice to End Tenancy and are therefore entitled to recover the cost of the filing fee from the Landlord. Pursuant to Section 72 of the Act, the Tenants may deduct \$50.00 from future rent due to the Landlord.

### **Conclusion**

The Notice to End Tenancy for Cause issued November 27, 2009 is hereby cancelled. The tenancy remains in full force and effect.

The Tenants may deduct \$50.00 from future rent due to the Landlord.

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: January 11, 2010

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