

## **DECISION**

Dispute Codes      CNC

### Introduction

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

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on February 22, 2010. The Landlord confirmed receipt of the hearing documents on February 27, 2010.

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

### Issues(s) to be Decided

Is the Tenant entitled to an Order to cancel the 1 Month Notice to End Tenancy for Cause issued on February 15, 2010, under section 47 of the *Residential Tenancy Act*?

### Background and Evidence

The fixed term tenancy began on December 1, 2009, and is set to expire on November 30, 2010. Rent is payable on the first of each month in the amount of \$580.00 and the Tenant paid a security deposit in the amount of \$290.00 on November 29, 2009.

The Landlord advised that he did not provide the Tenant with a copy of his evidence titled "LIST OF COMPALINTS" for fear that the Tenant would take revenge on the people who are named in this document. The Landlord confirmed that the evidence in appendix 1 and appendix 2 were copies of documents previously given to the Tenant.

The Landlord confirmed that the rental unit is a one bedroom apartment located in a strata building where the units are owned. The Landlord stated that the rental agreement was for the female Tenant and her young son but that he knew the Tenant's young daughter would be residing with the Tenant on most occasions.

The Tenant confirmed that her son will be 1 year old in a few days and her daughter is three years old.

The Landlord confirmed the notice was issued because the Tenant has allowed an unreasonable number of occupants in the unit; and the Tenant or a person permitted on the property by the Tenant has (a) significantly interfered with or unreasonably disturbed another occupant or the landlord, (b) put the Landlord's property at significant risk, (c) adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord, and (d) jeopardized a lawful right or interest of another occupant or the Landlord.

The Landlord argued that all of the reasons listed above revolve around the Tenant allowing her boyfriend to stay at the rental unit and party into the early hours of the morning causing disturbances to the neighbours in her building and the building next door. The Landlord stated that he received a call on February 2, 2010 from the building manager informing him of the complaints from their building and the neighbouring building. The Landlord received a second call on February 5, 2010 from a neighbour and member of the strata council informing him of continuing noise, traffic, and partying issues in the rental unit.

The Landlord stated that he called the Tenant on February 5, 2010, and informed the Tenant of the complaints that he was receiving. The Landlord argued that he specifically told the Tenant that if he received any more complaints that he would be issuing the Tenant a 1 Month Notice to end the Tenancy. The Landlord said that the Tenant told the Landlord there must have been a mistake as she was not partying.

The Landlord advised that he received additional complaints on February 15, 2010, which informed him that the police had been called and there was no mistake that the Tenant was partying on the weekends when her children were away.

The Landlord issued the Notice February 15, 2010, delivered it to the Tenant's rental unit placing it under the Tenant's door, and then called her later that evening to discuss the eviction. The Landlord stated that he discussed with the Tenant that it would be better if she found a two bedroom unit to accommodate both children and her boyfriend and that he would provide the Tenant with a reference. The Landlord stated that the Tenant was in agreement and was indifferent about complaints arguing that they were a mistake.

The Tenant testified that she does not have a boyfriend and the male person who has been at her rental unit is the father of her child. The Tenant stated that her child's father

spends eight hours during the week days and stays on the weekends to help her out. The Tenant stated that they have not had parties in her rental unit and that everyone confuses her rental unit with unit #106 which has loud parties.

The Landlord explained that unit # 106 is located almost at the other end of the hallway past the staircase and that there is no way someone could confuse noise coming from unit #106 for noise coming from the Tenant's unit.

After stating that she is not loud the Tenant advised that she has surround sound for her television which can be loud. The Tenant argued that when the next door neighbour complained she stopped using her surround sound.

The Tenant confirmed that during the February 5, 2010 conversation, the Landlord told her she would be evicted if he continued to receive noise, traffic, and party complaints about her unit.

The Tenant began to argue that she wasn't home on February 2, 2010 to make noise when the Landlord clarified that he received the complaint on February 2, 2010 for noise that had been occurring on the weekends in January 2010. The Landlord also confirmed that he had been in the rental unit in early February 2010 and saw a mattress on the living room floor and several personal items which supports that someone was residing in the living room.

When I asked the Tenant why people were complaining of noise and traffic coming and going from her rental unit the Tenant responded by saying she volunteers at a bar every Wednesday and Friday evening and does not arrive home until 3:00 a.m. so she was not at home to party. After I asked what about the rest of the weekend and the presence of the child's father the Tenant claimed she had her children and could not party and the child's father did not spend weekends at her place and he does not sleep at her rental unit.

The Tenant claimed that the mattress was in the living room so she could watch movies with her children on movie nights as she did not have a VCR in her bedroom. The Tenant went on to say that she "cannot lock" her patio door in case she leaves her keys inside. I confirmed that it was the Tenant's personal choice not to lock her patio door and that the door does lock properly.

The Landlord summarized his testimony and added that the Tenant just agreed with him when he discussed the issue of cancelling the notice to end the tenancy and did not dispute him. The Landlord advised that he attended today's hearing for his right to

defend himself and to request to have the Tenant move out. The Landlord stated that he is seeking an Order of Possession effective March 31, 2010 in accordance with the 1 Month Notice.

### Analysis

Upon review of the 1 Month Notice to End Tenancy dated February 15, 2010, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act.

Upon consideration of all the evidence presented to me, in the presence of the Tenant's contradictory testimony, I find the Landlord had valid reasons for issuing the Notice therefore I dismiss the Tenant's application to cancel the Notice.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing.

### Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **March 31, 2010 at 1:00 p.m.** This order must be served on the Respondent Tenant 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: March 10, 2010.

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Dispute Resolution Officer