

## **DECISION**

Dispute Codes

CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel the One Month Notice to End Tenancy for cause.

The tenant served the landlord's agent in person on February 08, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

Is the tenant entitled to cancel the One Month Notice to End Tenancy?

### Background and Evidence

This month to month tenancy started on January 01, 2010. The tenant pays a monthly rent of \$700.00 which is due on the first of each month. Both Parties agree that the tenant paid a security deposit of \$375.00 on December 17, 2009. The tenant stated that she paid a pet damage deposit of \$100.00 on February 01, 2010 however the landlord's agent disputes this and states that this amount was never paid by the tenant and he did not pursue it as he had issued the notice to end tenancy.

The landlords' agent testifies that the tenant moved into the rental unit and within a week he received phone calls and complaints concerning a dispute between this tenant and her neighbour. The two tenants were arguing over the visitor's parking space and there were also

noise complaints between the two tenants. The landlord agent testifies that he got the tenants together to attempt to resolve their issues on two occasions and on one occasion by telephone. He states he was unsuccessful and ended up giving this tenant a One Month Notice to End Tenancy for cause on February 05, 2010. The reason given on this notice is that the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord.

The landlords' agent also testifies that the park manager for the village strata sent the tenant a breach letter concerning the issues they felt she was responsible for on February 04, 2010.

The tenant disputes the reason given on the landlords Notice. The tenant testifies that since moving in she has experienced harassment from her neighbouring tenant. When she has had a visitor they parked their car in the visitors spot as required and on two occasions her neighbouring tenant left notes on her visitors' car which stated that the visitor's parking spot was her spot. The tenant states she gave these letters to the manager and he has denied having them and would not produce them when asked to do so for this hearing. The tenant states she attempted to communicate with her neighbour but she insisted that the visitors' parking bay was her own space. The tenant has provided information that shows the visitor parking spot is available on a first come first serve basis and is not the sole parking bay for her neighbours use. The tenant also states that she never received a breach letter from the Strata and has had no formal warnings about noise issues.

The tenant claims that she has tried to work with her neighbour, as they have an adjoining wall, concerning the noise from her unit. She has moved her children's X-Box game to the basement level to lessen the noise. The tenant also claims that the neighbouring tenant accused her of having a loud party at her house. The tenant disputes this and states that it was a birthday party for her son which was a family affair it started at 4.30 p.m. and ended by 9.00 p.m. There was some music early on then a movie and dinner with her family.

The tenant states that her neighbour has accused her of having a dog who is left alone all day to bark. The tenant claims that she does have a dog but he is not left alone as someone is in the house all day with it. She states that there are other neighbours living around them that do have dogs that bark.

The tenant states that the landlords' agent told her if she could get along with her neighbour she could stay at the unit however the day before she got the Notice to End Tenancy her neighbour drew her into another argument and the next day she was served the eviction notice. When she disputed this Notice with the landlords' agent he said she had received the notice because the other tenant had lived there longer.

The landlords' agent stated that the other tenant has lived at her unit since September 2009. He states that until this tenant moved in next door he had never received a complaint about this other tenant. The landlords' agent testifies that he has never heard any noise or the dog barking from the tenants unit and has relied on information received from her neighbouring tenant and the breach letter provided to him. It was this information on which he based his decision to issue the tenant with the Notice to End Tenancy. The landlords agent states the tenant did give him the letters her neighbour left on her visitors car but he no longer has these.

The tenant called her first witness who testifies that it is the tenants' neighbour who allows her children to bang on the walls and it is this neighbour who has disturbed them. The witness claims he hears this because he babysits the tenants' children and is often in the house. This witness confirms that it was his car that the neighbouring tenant left the notes on about not parking in her space when he had parked in the visitors' space.

The tenants' second witness lives across the road from the tenant and is related to her. The tenant asked her witness if she had ever had any problems with noise from her unit. The witness testifies that she has not. This witness also testifies that the tenants neighbour does park her car in the visitors spot.

The landlords' agent declined the opportunity to cross exam the witnesses.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses; In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy. The landlord has not provided any witness or any corroborating evidence that this tenant has caused an unacceptable noise level that has significantly disturbed her neighbor; the landlord has provided insufficient evidence that the tenant was served the breach letter from the Strata; the landlord has provided insufficient evidence that this tenant is responsible for any disturbances other than a letter from the neighboring tenant who is in direct conflict with this tenant. While I acknowledge that there is a dispute between the tenants this is not grounds to end a tenancy without any further evidence to support the reason given on the Notice to End Tenancy and as a result, the Notice is cancelled and the tenancy will continue.

### Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated February 05, 2010 is cancelled and the tenancy will continue.

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 26, 2010.

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Dispute Resolution Officer