

## **DECISION**

### Dispute Codes:

CNC

### Introduction

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral testimony and to make submissions during the hearing.

### Preliminary Matter

Neither party submitted a copy of the Notice to End Tenancy. The tenant and landlord agreed upon the contents of the Notice that the landlord referenced from her copy during the hearing. The tenant submitted a copy of her Notice to the Residential Tenancy Branch, as requested, immediately after the hearing. The tenant's copy matched that described by the landlord during the hearing.

### Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, should be set aside.

### Background and Evidence

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant was required to vacate the rental unit on April 30, 2010. The reason stated for the Notice to End Tenancy was that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The tenant has lived in this unit for an extended period of time in excess of ten years. The rental is part of a strata of side-by side units.

The landlord presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- In September 2009 the tenant reacted poorly to a request for rent payment as she yelled and swore at the landlord and forbid the female landlord from coming on the property;
- That an on-going dispute with the neighbour who owns her unit has escalated to the point where this neighbour is afraid to go outside;
- That the tenant has not picked up garbage from her backyard, despite an April 7, 2010, letter from the landlord asking that she do so;
- That when collecting the October 2009 rent the tenant came to the door in devil's horns and paid the rent in coins and small bills;

- That the tenant's insistence that the female landlord not go on the property has jeopardized the rights of the landlord.

The landlord stated that their tenant has made past reports against others in the complex, at times causing people to be evicted. The tenant had alleged that her neighbour had been purposely banging on her walls but when the landlord attempted to replicate this problem they found disturbances heard through the heavy walls would not have been likely.

The landlord always believed that their tenant was not responsible or guilty of poor behaviour, despite past evidence indicating that the strata property management company found her to be disturbing others as early as 2006. It was not until the tenant swore at the female landlord in September 2009 that the landlord began to believe that perhaps their tenant was causing problems for the neighbour.

The landlord submitted letters from the neighbour dated April 22, 2010; April 15, 2010; March 25, 2010; alleging harassment by the tenant including attempts at videotaping, telling the neighbour she will kidnap her, using threatening gestures, yelling at her, standing in front of her vehicle and that the tenant threw garbage in her backyard.

These allegations were disputed by the tenant, however; the tenant acknowledged that the police did attend her property when she was attempting to video the neighbour, as she had been told that this type of evidence was required if she were to make any complaints against her neighbour.

The parties acknowledge that a Nanaimo by law enforcement officer wrote a letter dated April 1, 2010, informing the landlord that they had received several complaints of the property being unsightly. The officer found the yard to contain garbage bags and discarded material. The letter included reference to comments made by the strata property manager that the tenant has caused disturbances and that the RCMP had been called to the property.

The tenant first saw the by-law officer's letter when she was served with evidence for this hearing. The tenant then met with the bylaw officer on May 10, 2010; and was told that the bylaw officer had looked through the fence and had seen bags of garbage. The tenant submitted that those were bags of pop bottles for recycling. The landlord stated that 2 days ago garbage was still in the yard; the tenant denied this, stating that the yard is clean.

The landlord provided copies of 7 different RCMP members' business cards, as evidence of police attendance at the property, but did not detail the reasons for police attendance, the dates of reports or if any of the calls were founded.

The landlord has given the tenant one written notice dated April 7, 2010, asking that she not bring shopping carts on to the property and that she clean up the garbage in the backyard. The Notice ending the tenancy was issued due to recent letters of complaint by the neighbour and encouragement by the strata property management company.

The parties acknowledge that a meeting was held in June 2009, by the strata property management company, in an attempt to have the tenant and her neighbour enter into mediation to resolve the conflict they experience with each other. The parties did not reach an agreement to mediate. On June 30, 2009 the property management company issued a letter to the tenant which indicated that if the tenant or her neighbour made any

future allegations against the other these allegations must be accompanied by a 3<sup>rd</sup> party witness or supported by audio or video evidence.

The tenant presented the following evidence and arguments in support of the application to cancel the Notice to End Tenancy for Cause:

- That the backyard was cleaned up on the weekend prior to May 9, 2010;
- That she did video the neighbour, as she was told that this type of evidence was required in order to submit complaints against her neighbour;
- That she has not been warned that she could be evicted;
- That she did swear at the landlord in September 2009;
- That her neighbour is not frightened and just 2 days ago was out playing with her daughter in the driveway.

The tenant submitted copies of letters of support from the 2 tenants and the owner of unit #38 and from another tenant in the complex.

### Analysis

After consideration of the evidence before me and the testimony provided during the hearing, I find that the landlord has provided insufficient evidence to show that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. In reaching this conclusion I considered the following factors:

- That past complaints have not been taken seriously by the landlord and provide no weight to support the Notice;
- That the tenant has not been given any notice of complaints made recently that caused the landlord to issue the Notice;
- That there is no evidence that the police attendance was founded or simply the result of calls made due to the on-going dispute between the tenant and her neighbour;
- That the tenant was not made aware of the bylaw letter or a date by which the garbage must be picked up and the possible consequences for a failure to comply;
- The disputed testimony in relation to the garbage;
- That swearing on one occasion 7 months ago, does not constitute grounds for eviction;
- That the tenant's rent payment made in October 2009, while unconventional, does not form the basis for eviction as it occurred on one occasion;
- That there is no evidence before me that the neighbour will not go outside of her home due to the tenant's presence;
- That there is only disputed testimony in relation to the neighbour's allegations, which are not verified.

In determining whether this tenancy should end, I gave consideration to the lack of communication with the tenant by the landlord in relation to specific concerns and the possibility of eviction. I also find that there has been an on-going, long-term conflict between the tenant and her neighbour which has obviously caused an extreme amount of discord. However, in the absence of any evidence that the allegations made by the neighbour have been fully investigated by the landlord, confirmed as valid and then communicated to the tenant with a warning, I find that the Notice issued on March 26, 2010 is of no force or effect.

The tenant must be aware that any complaints which are found to cause an unreasonable disturbance to the landlord or another occupant of the residential property could result in further action by the landlord pursuant to the Act.

I have enclosed a copy of the *Guide for Landlords and Tenants in British Columbia* for reference by each party. I also urge the parties to review information provided on the Residential Tenancy Branch web site, <http://www.rto.gov.bc.ca/>; and in particular, the fact sheet on resolving disputes on your own, which provides some guidance in relation to communication of concerns.

### Conclusion

As I have determined that the landlord's have submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the Act, I hereby set aside the One Month Notice to End Tenancy, dated March 26, 2010, and I order that this tenancy continue until it is ended in accordance with the Act.

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: May 19, 2010.

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Dispute Resolution Officer