

## **DECISION**

**Dispute Codes**      CNC, FF

### **Introduction**

This hearing was convened by way of conference call to deal with the tenant's application to cancel a notice to end tenancy for cause, and to recover the filing fee from the landlord for the cost of this application.

The parties appeared, gave affirmed evidence, and were given the opportunity to cross examine each other on their evidence.

### **Issues(s) to be Decided**

Is the tenant entitled to an order cancelling the notice to end tenancy?

### **Background and Evidence**

This month-to-month tenancy began on August 1, 2007, and the tenant still resides in the rental unit. The rented unit is a basement suite in a house that is also occupied by the landlord. Rent in the amount of \$800.00 is due on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit in the amount of \$400.00 from the tenant.

The tenant testified that on March 10, 2010 the landlord told her he was thinking of selling the house and asked the tenant to clean her unit. She also stated that the landlord had asked the fire marshal to inspect the unit.

On March 23, 2010, the landlord viewed the rented suite with a realtor. Then on March 24, 2010 the landlord served the tenant with a Caution Notice, a copy of which was provided as evidence in advance of the hearing. The Caution Notice stated: "Proper and reasonable health, cleanliness and sanitary guidelines are not being followed. Failure to rectify these issues by March 29, 2010 may jeopardize you tenancy." On

March 29, the landlords again attended the unit and told the tenant the place was disgusting, which the tenant disputes.

The tenant testified that at that particular time, her dog was dying, and the house was untidy; the kitchen needed washing, but it was not unhealthy. She stated that she had done some cleaning, and the landlord took pictures of recycling and garbage cans, but the landlord said it was not good enough and served the tenant with a 1 Month Notice to End Tenancy for Cause on March 29, 2010. A copy of that notice was provided as evidence in advance of the hearing. The tenant also submitted as evidence copies of emails from realtors thanking her for the showings and her cleanliness.

The landlord testified that the baseboard covers were taken off the heaters exposing the elements. When questioned about it, the tenant stated that the fire marshal had told her it was okay because it was far enough from other units. She said that they came off, and she couldn't get them back on because of their length. They were reattached once she had some assistance to get them back on.

The landlord questioned the tenant about the lease, and the tenant responded that the lease states that the tenant is to clean the carpets periodically, not annually as suggested by the landlord. She stated that she has had the carpets cleaned once.

The landlord testified that the evidence of the tenant is incorrect, in that he did not tell her he was thinking of selling, he told her on March 4, 2010 that he was selling. Further, he told the tenant on March 14 that the suite would be shown to realtors on March 23, and her photos were taken on March 29, not March 24 as shown on the back of the photos. This is not disputed by the tenant. He also stated that she did not clean the unit until after March 29, 2010, and didn't tell him that she had done so.

## **Analysis**

The *Residential Tenancy Act* deals with cleanliness and health issues for landlords and tenants. Specifically, I refer to Section 32 (2):

**32 (2)** A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Further, the *Act* deals with inspections by landlords:

**29 (1)** A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) The purpose for entering, which must be reasonable;
  - (ii) The date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The 1 Month Notice to End Tenancy for Cause that was issued to the tenant on March 29, 2010 states that the tenant has “significantly interfered with or unreasonably disturbed another occupant or the landlord,” that the tenant has or is likely to “adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or

the landlord,” and that the tenant has or is likely to “jeopardize the lawful right or interest of another occupant or the landlord.”

I have heard no evidence from either party of any interference or disturbance, nor any evidence that the tenant has adversely affected the quiet enjoyment, security, safety or physical well-being of the landlord. The landlord obviously feels that issue of jeopardizing the lawful right or interest of the landlord has been proven in that he has the right to sell the house and having it in a reasonably clean condition is important to show to perspective purchasers, however, a Caution Notice was issued and the tenant complied.

It’s also important to note that the rental unit is the tenant’s home, which must be free from significant interference by the landlord, and the landlord must provide the tenant with quiet enjoyment, meaning that the tenant shall enjoy the possession and use of the premises in peace and without disturbance, subject to the landlord’s right of entry under the Legislation.

### **Conclusion**

The tenant’s application is hereby allowed, and the notice to end tenancy is hereby cancelled.

I further order that both parties comply with the *Act*, and Sections 29 and 32 in particular. I am providing for both parties a booklet entitled “A Guide for Landlords and Tenants in British Columbia” with this Decision to assist the parties with the rental requirements and responsibilities for both parties.

Since the tenant has been successful with her application, the tenant is entitled to recovery of the filing fee in the amount of \$50.00 from the landlord for the cost of this application.

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 31, 2010.

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Dispute Resolution Officer