

## **DECISION**

### **Dispute Codes:**

CNC, MNDC, OPC, FF

### **Introduction**

This was a cross-Application hearing.

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 affirmed oral testimony and to make submissions during the hearing.

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

Should the Notice ending the tenancy for cause issued on April 26, 2010, be cancelled?

Is the landlord entitled to an Order of possession?

Is the tenant entitled to compensation for damage or loss?

Is either party entitled to filing fee costs?

### **Background and Evidence**

The landlord and the tenant agree that on April 26, 2010, 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 May 31, 2010. The reasons stated for the Notice to End Tenancy was that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

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

- That the tenant likes to drink and party;
- A November 9, 2007 letter to the landlord from tenants in unit 106 in relation to complaints of noise caused by the tenants above them;
- A June 23, 2008 letter to the landlord from the tenant in unit 305 complaining of noise from an apartment below;

- A June 12, 2009, warning letter to the tenant that if he continues to disturb other occupants he will be evicted;
- An undated letter from September 2009 from the occupant in #104 complaining of noise, smoke from marijuana and that the tenant is drunk;
- A March 19, 2010 letter to the landlord from the occupant in #105 alleging that the tenant is inconsiderate and violent and that he disturbs her sleep;
- A March 19, 2010, letter from neighbouring occupants alleging the tenant is disturbing others with noise, violence and aggressive behaviour;
- A March 30, 2010 letter from the occupant in #305 alleging constant noise problems caused by the tenant, late night parties, shouting which results in stress and loss of sleep;
- That other occupants are waiting for the outcome of this hearing and if the tenant remains, they will move out; and
- A April 14, 2010 letter from the occupants of unit #106 due to the behaviour of the tenant, alleging police attendance 3 weeks prior and concerns for their safety.

The landlord has repeatedly talked to the tenant about disturbances caused, but did not provide specific dates of these conversations. The landlord provided the tenant with copies of the letters of complaint; the March 19 letters was given on the same date the landlord received it and the April 14 letter was given on April 15, 2010.

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

- That he did receive a warning letter in June 2009;
- That he did not receive any of the other letters of complaint until the landlord served him with Notice of the landlord's hearing;
- That the landlord has talked with him only on several occasions regarding disturbances caused to others;
- That he denies the police attended at his apartment;
- That the letters of complaint dated 2007 and 2008 were in relation to other units as the tenant lives on the ground floor and #205 is above his unit, not #305;
- That the landlord is being malicious as they recently served him a 1 Month Notice for cause which was cancelled at a recent hearing the notice was cancelled

When the tenant denied having received the letters of complaint the landlord stated he had given copies to the tenant on the same date that he had received the letters. The tenant found the June 2009 letter from the landlord invalid, as the accounts were unsubstantiated. The tenant denied having ever met the occupant from unit 206, who had complained the tenant was violent. The tenant believes that the undated letter of complaint that was identified as having been written in September 2009 was actually given to the landlord 2 years ago and that since that time he and that occupant have resolved their differences.

The tenant alleges that this second attempt to evict him amounts to harassment and he claimed \$00.00 for loss of wages as a result of having to respond to the allegations. The tenant did not provide any evidence of the loss claimed.

### Analysis

After considering all of the written and oral evidence submitted at this 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 and that the Notice is of no force or effect. In reaching this conclusion I considered the following factors:

- The inability of the landlord to provide any information detailing investigation of complaints made by other occupants;
- That there have been no complaints recorded between June 2009 and a reported complaint in March 2010;
- That between March 19, 2010 and April 26, 2010, when the Notice was issued, there were no complaints made against the tenant;
- That the landlord did not know when the police may have attended, why they attended the property or who called the police;
- That the allegations presented in relation to violence are unsubstantiated by any investigation and that no records of incidents were presented as evidence.

In determining whether this tenancy should end, I gave extensive consideration to the inability of the landlord to provide evidence of any complaints made between June 2009, and April, 26, 2010, that were investigated, found to be valid and then presented to the tenant, with a warning. The landlord expressed general concerns in relation to allegations of disturbances, violence and drunken behaviour; but general accusations do not provide an adequate basis to end a tenancy. I find that allegations made 2 and 3 years ago are dated and of no relevance to the Notice issued in 2010.

In the absence of evidence in relation to dates that incidents occurred, investigation of those incidents and any communication with the tenant in relation to those incidents, I find that that landlord has not, on the balance of probabilities, substantiated ending this tenancy. However, it is clear that some occupants of the building have concerns and the tenant must use this decision as a warning that any substantiated incidents resulting in a loss of quiet enjoyment to other occupants could result in further action by the landlord under the Act.

In relation to the tenant's claim for compensation; during the hearing I dismissed this claim as the tenant provided no evidence supporting the loss of wages. I have made no finding in relation to the underlying intent of the landlord, other than it appears the landlord is motivated by a sincere effort to provide all occupants with the right to quiet enjoyment.

I have enclosed a copy of the Fact Sheet – Resolving a Dispute on Your Own, for reference by each party. This may assist the parties in developing an approach to any problems in the tenancy that will result in clear communication of concerns and a record of those concerns.

As the landlord's claim has no merit I decline filing fee costs to the landlord.

As the tenant's claim had merit I find that the landlord is entitled to filing fee costs and may deduct \$50.00 from the next month's rent owed.

### 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 April 26, 2010, and I order that this tenancy continue until it is ended in accordance with the Act.

The tenant is entitled to deduct the \$50.00 filing fee from the next month's rent owed.

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: June 24, 2010.

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Dispute Resolution Officer