

DECISION

Dispute codes

For the Tenant CNC

For the Landlord OPC, FF

Introduction

This hearing was convened in response to an application by the tenant filed on February 22, 2010 to cancel a 1 Month Notice to End Tenancy for Cause (Notice to End) dated February 18, 2010; and, an application by the landlord filed on May 18, 2010 for an Order of Possession in respect to the same Notice to End and in the event the tenant cancelled their application.

Both applicants attended the conference call hearing and were permitted to make submissions, ask questions, present witnesses and provide affirmed testimony. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The Notice to End was issued by the landlord for the reasons:

Tenant or person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*
- *Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

Tenant has engaged in illegal activity that has, or is likely to:

- *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord,*
- and,*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so – in respect to a Breach Letter dated January 14, 2010.

In this type of application, the onus is on the landlord to prove the Notice to End was issued for sufficient reasons, and that at least one reason must constitute sufficient cause for the Notice to be valid. The landlord is not required to prove all reasons stipulated for ending the tenancy.

Issue(s) to be decided

Is there *sufficient* cause to end the tenancy?

Should the Notice to End be cancelled?
Is the landlord entitled to an Order of Possession?

Background and evidence

This tenancy began August 01, 2007. The tenant occupies a subsidized rental unit in a multi-unit complex.

The landlord testified they issued the Notice to End on February 18, 2010 subsequent to a 'breach letter' issued to the tenant on January 14, 2010, for, "creating an unreasonable level of noise in (their) suite" – for, "the last couple of months" - citing that the tenant must cease any conduct resulting in the noise, to the benefit of other tenants and the landlord. The landlord also testified that the Notice to End was issued as a result of noise and noisy conduct by persons permitted on the property by the tenant. The tenant disputes the allegations.

The landlord submitted an abundance of document evidence consisting of three (3) sections dated from July 2009 to February 18, 2010 - February 18 to April 11, 2010 - and from April 11, 2010 to June 2010 – largely consisting of incident reports and paging reports documenting complaints of noise emanating from the tenant's suite, complaints (via paging reports) of noise, loud music, loud conversations, noisy partying and interventions by Police in respect to noise and loud music from #102.

It is clear that the majority of the complaints of disturbing noise originate from the suite directly above the tenant; however, there is complaint information documented from 5 other residential units in the complex in respect to complaints of loud noise from #102. The resident manager and the relief manager were also witness and complainants to some of the loud music and noise reported by the upstairs neighbour, and each also submitted complaint reports of loud music, loud conversations and exchanges emanating from the tenant's suite.

The tenant submitted letters of support from 3 residential units of the residential complex. These 3 letters are in sharp contrast to the complaints of loud music and disruptive noise as provided by the landlord. The letters claim the tenant's rental unit is not a source of noise as the landlord's evidence portrays.

The landlord submitted written / documented complaints in respect to tenant's unit;

<u>DATE</u>	<u>time</u>	<u>Report Type</u>	<u>Complaint</u>	<u>Source</u>
Jul 17&18 09	All day/night	written	loud music	203

Jul 28 09	3:23 a.m.	paging report	noise	203
Aug 27 09	-----	written	noisy music 1 – 6 a.m.	203
Oct 13 09	11:08 p.m.	paging report	loud music waking tenant	203
Dec14 09		verbal	loud bass / home theatre	203
Dec31 09	12:27 a.m.	paging report	loud music/ can't sleep	203
Jan 03 10	12:18 a.m.	paging report	loud music playing	203
Jan 10 10	3:27 a.m.	paging report & written	too loud again	203
Jan 10 10	9:20 a.m.	written	Tenant screaming loudly for 1 hour. Heard by RM	203
Jan 10 10	12:14 a.m.	paging report	Tenant is very loud	203
Jan 14 10	[Breach Letter by Landlord]			
Jan 20 10	-----	written	non tenant with key	Res. Mgr.
Jan 21 10	02:00 a.m.	written	extreme loud music	203
Jan 23 10	5:30 p.m.	written	very loud music	203
Feb 01 10	all day	letter	All day noisy music	203
Feb 02 10	10:46 p.m.	paging report	noise	203
Feb 05 10	10:06 p.m.	paging report	loud noise	203
Feb 05 10	11:58 p.m.	paging report	too much noise	203
Feb 06 10	7:10 p.m.	written	loud music	Rel. Mgr /203
Feb 06 10	10:10 p.m.	written	very loud music	Rel. Mgr /203
Feb 06 10	2:10 a.m.	written	very loud music	Rel. Mgr /203
	(3 rd . complaint within 5 hours – guest answered door – apologized)			
Feb 09 10	-----	e-mail to landlord CEO	history of noise from102	203
Feb 09 10	-----	letter to landlord CEO	history of noise from102	203
Feb 06 10	11:35 p.m.	paging report	too much noise again	203
Feb 09 10	10:10 p.m.	paging report	102 music is very loud	203
Feb 13 10	all day	letter (from 3 units)	loud music all day	1. 203 2. other 3. other
Feb 14 10	1 – 6 p.m.	letter	loud music with louder conversations with visitors	203 and guests
Feb 14 10	5:00 p.m.	paging report	very loud music daily	203
Feb 16 10	-----	telephone message	very loud music. Suite full of young people partying & verbally abusive. Tenant not home.	other
Feb 18 10	[1 Month Notice to End Tenancy for Cause issued by landlord]			
<u>DATE</u>	<u>time</u>	<u>Report Type</u>	<u>Complaint</u>	<u>Source</u>
Feb 19 10	10:15 p.m.	letter / Police	loud music / confrontation	Res Mgr.
Feb 20 10	12:58 a.m.	paging report	loud music playing – can't sleep	203
Feb 20 10	9:47 p.m.	paging report	all day loud music and noise	203
Mar 01 10	[six (6) Police file numbers submitted to unit 203 from Police]			
Mar 02 10	7:00 p.m.	Police	loud music	203
Mar 07 10	-----	Police	tenant noisy / police called	203
Mar 08 10	2:40 p.m.	written	very loud bass from tenant	Res Mgr.
Mar 18 10	2 - 9:00 a.m.	letter Police	noise, loud music, yelling	Multpl.Tenants

Mar 22 10	-----	letter	loud music / past 7 months	Rel. Mgr
Apr 24 10	3:00 a.m.	written	tenant's visitors in lobby acting strange	
			Visiting 102, but too crowded	Res Mgr.
Apr 26 10	11:27 a.m.	written	girl heard yelling in 102	Res Mgr.
Apr 27 10	8:29 p.m.	paging report	Tenant making loud noise	203
May 1 10	7:15 & 9:33p.m.	paging report	People -102 making lots of noise	203
May 1 10	7:15 & 9:33p.m.	written (dupl.)	People -102 making lots of noise	203
May 3 10	9:54 p.m.	written	102 very loud music at this hour	203
May 3 10	all night	letter	Police called. 102 noisy. Whole night	
			You could hear music on and off,	
			Screaming and banging	Res Mgr.
May 7 10	8:30 p.m.	written	too much noise from 102	203

The landlord presented the following witnesses:

Witness 1 – MD – Resident Manager :

The witness testified under solemn affirmation. She started as Resident Manager in December 2008. From that time to July 2009 she received many verbal complaints from an array of tenants in respect to loud music and noise from the tenant's suite, although the majority were from the upstairs tenant couple in #203. The balance of complainants wanted to, and still desire to remain, anonymous - purportedly for fear of the respondent tenant or guests. Since July 2009 she has spoken to the tenant on many occasions about verbal and written complaints of noise. She has requested the tenant turn down music or to soften loud conversations. The witness has personally heard loud 'bass' emanating from the tenant's suite, loud screaming and yelling from the suite, at times with guests present in the suite. The witness testified the tenant was at first co-operative and verbalized he would calm loud music or loud conduct when confronted by complaints. However, since early 2010, the tenant has responded with assertions of harassment and of intervention by his lawyer. The witness testified that complaints of noise from the upstairs neighbour are of noise often in the late hours and early morning hours, and that they have complained of loss of sleep due to being awakened by interjections of loud music, deep 'bass', or yelling. The witness has had to respond to pager messages complaints in the early morning many times.

Witness 2 – MS & LS – upstairs neighbours - #203 :

The witnesses testified under solemn affirmation. They have resided directly above the tenant since the tenant moved in (approx. 3 years). They previously resided in another unit of the complex. The witness testified that starting approximately June 2009 the tenant began playing very loud music, which began to interfere with their sleep at night. They testified that they, "let it go for some time" until the loud music was sometimes for an entire night. The witness testified it sounded like "parties" – which went on for consecutive nights. Besides the loud banging and thumping of loud music they could hear the tenant's guests talking loudly inside and outside the tenant's unit in the early

morning. The witness testified it all became, “too much”, and they finally turned to the landlord. They claim that they know of other tenants whom also complained. The witness testified that little has changed in the past twelve months. They complain of poor sleep due to noise from the tenant - interfering with their daytime jobs and the demands placed on the male witness when on call.

The landlord's document evidence indicates that as of two (2) months ago the upstairs neighbours have written or paged complaints to the landlord no less than thirty four (34) times. The complaints have been of loud noise emanating from the tenant's suite from mid -July 2009 to mid- May 2010, and these complaints have generated no less than seven (7) Police incidents with respective file numbers.

The Relief Manager, IM, states in one submission (a report) dated March 22, 2010, that over the previous seven (7) months he received many pages from the upstairs neighbour about loud noise from the tenant. Every time he went to check from their suite he heard banging from the suite below them, “high vibration and really noisy”. He goes on to state that he would receive co-operation from the tenant, but more recently the tenant has told him not to bother him until 11:00 p.m. and on occasions told him to call his lawyer, and his guest stated they could sue him for invading their privacy. “According to them they can play music no matter how loud it is until 11:00 p.m.” In the same report, the Relief manager states someone tried to use a key to enter his suite one early morning at 2:30 a.m. The individual apologized when confronted and went on to use the key to enter the tenant's suite.

The Tenant presented the following witnesses:

Witness 3 – AK - Tenant

The tenant testified under solemn affirmation. The tenant states that he suffers from a list of medical problems – some of which are very serious and can be debilitating and possibly life threatening. He is in a wheelchair. He testified that his mother and other people, who help him when he becomes ill, have a key to his unit. He stated that loud noise emanates from other sources in the complex – such as the complex ‘party room, and that he is not the source of the noise targeted by the complaints. The tenant stated that he is a good tenant, and that at least three other tenants (from which he provided letters) also agree. He endeavours to be helpful and friendly to others. He thinks he has been singled out by the upstairs neighbours, even when he is not there and in the hospital. The tenant testified that he disconnected his stereo ‘subwoofer’, for the past 3 month, but that the upstairs neighbour has still complained.

The tenant testified that he has submitted written complaints to the landlord that the upstairs neighbour sometimes bangs on his ceiling – he thinks with a hammer, and that

he thinks this is intentional. The tenant also asserted that the landlord has biased his tenancy by dispensing information about the tenant's past association with a notorious shooting incident which left him physically challenged.

The landlord testified that there were complaints of noise from the tenant's suite during a period the tenant has claimed he was hospitalized. The landlord also submitted copies of 2 written complaints and 2 paging reports from the tenant regarding banging from his ceiling, from suite 203.

Witness 4 – BG - Tenant's mother.

The witness testified under solemn affirmation. She testified that she operates a business near her son's home and spends a lot of time with her son at the rental unit – more often when her son is ill. She is there two (2) times per week, before and after work. When in the rental unit, there is no indication to her of the alleged loud music and other noise. The witness testified that on one occasion she was watching a movie with the tenant at approximately 7:00 p.m., when she heard "banging from the ceiling above" – to which the tenant commented to her that it was the upstairs neighbours. The witness also testified that she does not believe that the tenant is the source of the noise complaints and that he is being harassed by the management of the complex. She testified she has investigated other accommodations for her son but that it is difficult to find alternate accommodations which are wheelchair compatible, and near the medical resources required by the tenant.

The landlord also testified that the tenant breached a material term of the tenancy agreement - not corrected within a reasonable time after written notice to do so. The landlord had issued the tenant a 'breach letter' dated January 14, 2010 for breach of section 17 of the tenancy agreement – *17. Conduct*. This term of the tenancy agreement, essentially covenants that in the pursuit of quiet enjoyment for all occupants of the residential property, the tenant or the tenant's guest must not, in part, *disturb, harass, or annoy another occupant of the property*. The landlord argued that term 17 of the tenancy agreement is a *material term* of the agreement. In the breach letter, the landlord highlighted section or term 17 of the tenancy agreement, and requested of the tenant to cease conduct of loud noise which adversely imposed on the quiet enjoyment of other tenants.

Analysis

The landlord is not required to prove all reasons stipulated for ending the tenancy.

On the preponderance of the evidence and the testimony of both parties and their witnesses, and on the balance of probabilities, **I prefer** the landlord's evidence and **I find** the landlord has met their burden of establishing the landlord had *sufficient* cause to end this tenancy on the basis the tenant: *Significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

I find that term 17 of the tenancy agreement is such that it meets the test of a material term of this tenancy. A material term is one that the parties have covenanted is sufficiently important that the most trivial breach of that term gives the other party the right to end the tenancy. Term 17 begins by revealing the motive behind the term - to promote quiet enjoyment of all occupants and tenants, and states that;

The Tenant or the Tenant's guest must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant of the residential property or other person at any time and in particular between the hours of 11:00 p.m. and 9:00 a.m.

On the face of the evidence, I find the landlord gave the tenant written notice of a breach of this material term of the tenancy agreement, and that the landlord subsequently received 17 *loud noise complaints* in the 4 weeks which followed - and determined to end the tenancy. **I find** the landlord had *sufficient* cause to end this tenancy on the basis of the tenant's: *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so*

As a result of all the above, I uphold the landlord's Notice to End; and, effectively the tenant's application to set side the landlord's Notice is **dismissed**, without leave to reapply. The landlord is entitled to an **Order of Possession**, effective as specified in the Order.

Section 55 of the Act, in part, states as follows:

Order of possession for the landlord

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
- (a) the landlord makes an oral request for an order of possession, and
 - (b) the director dismisses the tenant's application or upholds the landlord's notice.

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

Conclusion

The tenant's application is **dismissed**. **I Order** the tenancy will end.

I grant an **Order of Possession** to the landlord **effective August 31, 2010**. Ending a tenancy is a serious matter; however, if the landlord determines to end the tenancy, this Order must be served on the tenant. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia 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*.