



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call on this date to deal with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. The parties each 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 7 or 8 years ago; neither party was able to provide the date. Rent is currently payable in the amount of \$500.00 per month and there are no rental arrears.

The landlord provided verbal testimony about giving the tenant verbal and written caution notices in 2008 about noise complaints, alcohol consumption and keeping his door open to the common area of the building. He further testified that on May 28, 2010 he had given verbal warning to the tenant to turn his music down at about 11:00 p.m. He went back to the unit again at 3:30 a.m. and stated that the music was louder. Another tenant and the landlord were awakened by the loud music, but when the landlord knocked on the tenant's door, the music was so loud that the tenant did not hear the knock. He spoke with the tenant who had complained and asked if she would

be a witness for this hearing, and she agreed. The tenant did not attend the hearing, but provided a letter with her complaints.

The tenant testified that he is being blamed for everything. He admitted his music is loud, however he uses earphones, and takes sleeping pills and discovered that the headphones had pulled away from the stereo. The tenant has applied for BC Housing, and is now on priority referrals for another rental unit not within this building.

The 1 Month Notice to End Tenancy was provided in advance of the hearing. It shows that it was issued on June 28, 2010 and has an expected date of vacancy of June 28, 2010. The landlord testified that he had made errors on the dates of the notice. He stated that the notice was issued on May 28, 2010. The notice also states that: "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."

Analysis

Firstly, with respect to the dates on the notice to end tenancy, the *Residential Tenancy Act* states that incorrect effective dates on the notice to end tenancy are automatically corrected if the dates do not comply with the *Act*. The landlord's testimony is that the date issued is incorrect, and I find that if the correct date of issuance was May 28, 2010, the effective date would be June 30, 2010. The *Act* does not permit me to change the date that the notice was issued, only the effective date, or the date of the expected vacancy in order for it to comply with the *Act*.

The evidence before me is that the tenant has disturbed other occupants or the landlord, and the tenant denies that he has done so knowingly.

The reason for issuing the notice to end tenancy speaks to illegal activity, and I have heard no evidence of illegal activity by this tenant.

Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled.

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: July 21, 2010.

Dispute Resolution Officer