

## **Decision**

**Dispute Codes:** CNC, FF

### **Introduction**

This hearing dealt with an application by the tenant for cancellation of a notice to end tenancy, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the tenant is entitled to either or both of the above under the Act

### **Background and Evidence**

A copy of the written tenancy agreement is not in evidence for this tenancy which began on or about June 15, 2002. Currently, the monthly rent is \$640.00. A security deposit of \$262.50 was collected on or about June 1, 2002.

Arising from various concerns related to the tenancy, the landlord issued a 1 month notice to end tenancy for cause dated May 31, 2010. The tenant disputed the notice by filing an application for dispute resolution on June 7, 2010.

The date shown on the notice by when the tenant must vacate the unit is June 30, 2010. Reasons shown on the notice for its issuance are as follows:

Tenant or a 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

Evidence submitted by the parties includes, but is not limited to, photographs, a receipt issued for payment of rent for July 2010, letters to the landlord from a former resident in the building, letters to the landlord from current residents, a letter to the landlord from a next door neighbour, letters of support for the tenant, 2 of what seem to be 4 different “written warning[s]” from the landlord dated, respectively, December 7, 2009 and June 20, 2010, and so on. In summary, the notice was issued principally on the strength of allegations that the tenant is responsible for “excessive noise” which is disturbing to other residents, and on the basis of the tenant’s allegedly “abusive behavior” toward a former resident who attends the building to visit and to do gardening.

### **Analysis**

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

Residential Tenancy Policy Guideline # 11 addresses “Amendment and Withdrawal of Notices,” and provides in part as follows:

A Notice to End Tenancy can be waived (ie: withdrawn or abandoned), and a new or continuing tenancy created, only be the express or implied consent of both parties.

The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of “waiver” can arise as the landlord is entitled to that rent.

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether the receipt shows the money was received for use and occupancy only.
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and
- the conduct of the parties.

The landlord issued a receipt to the tenant for payment of rent for July. However, the receipt does not read: "For Use and Occupancy Only." Despite this, based on the other documentary evidence and testimony of the parties, I find that the landlord's intent was not to waive the Notice to End Tenancy when this receipt was issued.

Having carefully considered the documentary evidence and testimony of the parties, I note as follows: **i)** that those expressing concern to the landlord about the tenant were not present to testify at the hearing; **ii)** that letters expressing concern about the tenant appear to be dated after the issuance of the notice to end tenancy, and appear to have been solicited by the landlord; **iii)** that a portion of the foregoing documentation is hearsay; **iv)** that there is no log setting out a detailed chronology of occasions and times when "excessive noise" has allegedly come from the tenant's unit; **v)** that there is no witness evidence to support the landlord's suspicions that the tenant is responsible for vandalizing a vehicle, or for removing signs posted in the laundry room, or for an abundance of garbage "scattered around" outside the building on June 25, 2010; **vi)** that concerns related to the allegation that "there are a few extra people staying in the suite" and that "this has been going on for a while," are assumptions; **vii)** that evidence submitted by the landlord in support of the notice to end tenancy, includes concerns which appear to have been discovered after issuance of the notice.

In sum, I find on a balance of probabilities that the landlord has presently failed to meet the burden of proving there is sufficient evidence for cause to end the tenancy.

Accordingly, the notice to end tenancy is hereby set aside, and the tenancy therefore continues in full force and effect.

As the tenant has succeeded in this application, I find that she is entitled to recover the filing fee by way of withholding \$50.00 from the next regular payment of monthly rent.

Finally, both parties are encouraged to familiarize themselves with the following specific provisions set out in the Act and the Residential Tenancy Policy Guidelines. First, section 28 of the Act speaks to **Protection of tenant's right to quiet enjoyment**, and provides as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline # 6 addresses the "Right to Quiet Enjoyment" and provides in part:

Every tenancy agreement contains an implied covenant of quiet enjoyment. A covenant for quiet enjoyment may be spelled out in the tenancy agreement; however a written provision setting out the terms in the tenancy agreement pertaining to the provision of quiet enjoyment cannot be used to remove any of the rights of a tenant established under the Legislation. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.

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Frequent and ongoing interference by the landlord, or, if preventable by the landlord and she stands idly by while others engage in such conduct, may form the basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- unreasonable and ongoing noise;
- persecution and intimidation

Further, section 56 of the Act speaks to an **Application for order ending tenancy early**. This section of the Act provides that in certain circumstances, it may not be necessary for the landlord to give the tenant a notice to end the tenancy in order to obtain an order of possession.

### **Conclusion**

The landlord's notice to end tenancy is hereby set aside.

The tenancy presently continues in full force and effect.

I hereby order that the tenant may withhold **\$50.00** from the next regular payment of monthly rent in order to recover the filing fee.

DATE: July 22, 2010

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Dispute Resolution Officer