

## **DECISION**

Dispute Codes      CNC, OPC, MNR, MNSD, FF, O

### Introduction

This hearing dealt with cross applications. The tenant applied to cancel a Notice to End Tenancy for cause. The landlord applied for an Order of Possession for cause, for a Monetary Order for unpaid rent, authorization to retain the security deposit, recovery of the filing fee and other issues. Both parties appeared at the hearing and confirmed service of documents upon them. Both parties were provided the opportunity to be heard and to respond to submissions of the other party.

### Issues(s) to be Decided

1. Is there a basis to cancel the Notice to End Tenancy for Cause or should the Notice be upheld?
2. Did the parties reach a mutual agreement to end the tenancy?
3. Is the landlord entitled to compensation for unpaid rent for June and July 2010?
4. Is the landlord authorized to retain the security deposit?
5. Award of the filing fee.

### Background and Evidence

The parties provided undisputed evidence as follows. The tenancy commenced March 1, 2010. The tenant paid a \$300.00 security deposit and is required to pay rent of \$600.00 on the last day of the preceding month. On March 31, 2010, April 25, 2010 and May 21, 2010 the landlord issued letters to the tenant with respect to disturbances of other tenants and breaching the terms of the tenancy agreement with respect to

keeping a dog. On May 22, 2010 the landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice). The Notice has an effective date of June 30, 2010 and indicates three reasons for ending the tenancy:

- 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
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlord testified the Notice was personally served on May 22, 2010. The tenant claimed the Notice was taped to the door. I determined the method of service does not impact the effective date on the Notice and the tenant applied to dispute the Notice within the time limits imposed by the Act; therefore, I did not hear further testimony with respect to the method of service of the Notice.

The landlord testified that he has received numerous complaints from other tenants about frequent parties, loud music, and marijuana smoke coming from the rental unit. Further, the police have been called to the unit several times, there have been fights in the unit and the tenant's children are disruptive and destructive to the common areas.

Both parties provided consistent testimony that the tenant approached the landlord on May 25, 2010 and agreed to vacate the unit by June 1, 2010 if the landlord would return the money already paid to the landlord by the Ministry for June 2010 rent. The landlord agreed to the tenant's terms and refunded the rent to the tenant immediately. The landlord also issued a receipt to show the rent was repaid to the tenant. The tenant did not vacate the rental unit.

The tenant testified that after making the agreement with the landlord he approached the owner of the property and claimed the owner agreed to permit the tenant to remain in the rental unit and that the tenant would pay the outstanding rent for June on July 20, 2010. The landlord claimed he had no knowledge of such an agreement despite the

fact the owner is the landlord's son. Rather, the landlord submitted that the owner told him to proceed with the appropriate action against the tenant. The owner was not present at the hearing and the landlord testified the owner was unavailable to testify. Upon enquiry, the tenant stated that despite reaching an agreement with the owner he did not repay the rent refunded to him June 2010 because the tenant had spent the money on other bills.

The tenant acknowledged that partying was taking place in his rental unit quite frequently but claimed the behaviour has improved since getting the eviction notice. The tenant denied marijuana smoke was coming from his unit and claimed other tenants smoke marijuana. The tenant acknowledged his children used to run up and down the stairs but that has ceased since the children's mother has moved down the hall. The tenant acknowledged that his child brought a dog to the property but the dog has been gone for months.

The landlord refuted the tenant's statements and explained another complaint was received about partying in the rental unit and the police attendance on June 10 or 11, 2010. Further, the tenant's child has vandalized the property in July, threw a football against a window, was hanging from a balcony and showed no respect for the authority of the landlord. The tenant denied his child vandalized the building despite the tenant subsequently cleaning the vandalism off the building. The tenant acknowledged his child may have thrown a football against a window and was hanging from a balcony.

With respect to the landlord's monetary claim, it is undisputed that the rent for June 2010 was returned to the tenant and the tenant continued to live in the rental unit. The Ministry of Housing and Social Development sent the landlord \$600.00 towards rent for

July 2010; however, the landlord explained he applied the funds to furniture payments owed by the tenant. Upon enquiry, I heard that the landlord's agent and the tenant had entered into a private contract whereby the tenant would pay the landlord's agent for furniture at a rate of \$600.00.

Near the end of the teleconference call, the landlord requested compensation for anticipated loss of rent for August 2010. The landlord was informed such a request was premature and that he had the right to make a subsequent application if the landlord suffers a loss of rent due to the actions of the tenant.

The tenant requested he be permitted to reside in the rental unit until July 21, 2010. The landlord requested an immediate order of possession.

### Analysis

Upon hearing from both parties, I am satisfied the parties reached a mutual agreement on May 25, 2010 to end the tenancy effective June 1, 2010. The landlord fulfilled the landlord's obligation under the agreement by refunding the rent received for June 2010 from the Ministry to the tenant and the tenant accepted this payment pursuant to the agreement. I find the tenant did not fulfill his obligation under the mutual agreement reached with the landlord. I find the disputed testimony with respect to any agreement with the owner of the property insufficient to conclude the parties reached a subsequent agreement for the tenant to remain in the rental unit. Therefore, I find the landlord entitled to regain possession of the rental unit based on a mutual agreement to end tenancy. Given the tenant has two children in his care I grant the tenant's request that he be permitted occupancy for another week. I provide the landlord an Order of Possession effective at 1:00 p.m. on July 21, 2010. The Order of Possession must be served upon the tenant and may be enforced in The Supreme Court of British Columbia as an Order of that court.

As it was clear the tenant was refunded rent for June 2010 yet continued to reside in the rental unit, I am satisfied the landlord suffered a loss of rent for the month of June 2010 and is entitled to recover that amount from the tenant. I award the landlord loss of rent for June 2010 in the amount of \$600.00.

As the parties were informed during the hearing, payments received for rent are to be applied to rent payable by the tenant and the landlord did not have the legal right to apply rent payments to amounts due under a different contract unrelated to the tenancy. Rather, the furniture contract is separate and distinct from the tenancy agreement and its terms may be enforced in the appropriate form. I find the landlord has received payment with respect to rent for the month of July 2010 and has not suffered a loss for July 2010; therefore, I deny the landlord's claim for loss of rent for July 2010.

I award the filing fee to the landlord. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the loss of rent suffered for June 2010. The landlord is provided a Monetary Order in the amount of \$350.00 [\$600.00 rent + 50.00 filing fee – 300.00 security deposit]. The Monetary Order must be served upon the tenant and may be enforced in Provincial Court (Small Claims).

### Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective at 1:00 p.m. on July 21, 2010.

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$350.00 to serve upon the tenant.

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 14, 2010.

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Dispute Resolution Officer