

## **Decision**

### **Dispute Codes:**

CNC, OLC, RP

### **Introduction**

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated October 5, 2010. The tenant was also seeking an order to force the landlord to comply with the Act and make repairs to the property. Both parties appeared and gave testimony in turn.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

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

The tenant is disputing the basis for the notice and based on the testimony and the evidence, the issue to be determined was whether the criteria supporting a One-Month Notice to End Tenancy under section 47 of the *Residential Tenancy Act*, (the *Act*), had been met, or whether the notice should be cancelled on the basis that the evidence does not support the cause shown. The burden of proof is on the landlord.

### **Background and Evidence**

Evidence submitted included a copy of the One-Month Notice to End Tenancy for Cause showing an effective date of November 30, 2010. a copy of a letter to the landlord, a copy of the tenancy agreement, the tenant's notes about some incidents that occurred in September, copies of 2 letters attesting to the condition of the carpet,

The landlord gave testimony that described several incidents in which the tenant had been heard arguing and yelling in the unit, playing music too loud and one incident in which the tenant's visitor had caused a disturbance requiring the presence of police. The landlord stated that although the noise was not heard in her suite, she had received ongoing complaints from other residents who objected to the volume of the TV and the audible ranting coming from the tenant's suite.

The landlord testified that the tenant was given many verbal warnings, which would cause the tenant to become verbally abusive to the landlord, including the use of foul language. The landlord stated that she had also sent the tenant a response to the tenant's complaint letter regarding a key charge and the unclean condition of the carpets and in that letter the landlord had reminded the tenant that disturbing others was a violation of the tenancy agreement. The landlord testified that, in spite of the warnings the tenant's conduct had not improved and the landlord therefore wants the tenancy to end pursuant to the Notice issued.

The landlord presented two undated complaint letters typed by the landlord, but signed by other residents stating that the tenant "*has been noisy since she moved in*" alleging loud music night and day, talking arguing and yelling at her son and others.

The landlord was permitted to bring in a witness and this individual testified that the tenant had been loud for about a month with walking around at night and high volume on the TV. However, according to the witness things have been much quieter lately.

The tenant testified that she did not feel that the noise made in her suite was excessive. The tenant acknowledged that on one occasion her young son and others had been playing music and had been dancing after receiving a new Wii system and her grandchildren may have been running around as toddlers do. The tenant also admitted that she may have been speaking louder than normal at times because of her son's hearing impairment. In regards to the incident involving the tenant's associate and the police, the tenant explained that this individual had come to her door and was being overly loud when she refused to admit him, so she called police to rectify the situation so as not to let her neighbours be disturbed by the commotion. The tenant testified that much of the noise being complained about is normal living activities that she too must tolerate from other suites. The tenant denied being verbally abusive to the landlord and the other allegations and pointed out that the landlord had never issued a formal written warning. The tenant stated that the notice should be cancelled as the facts do not support an eviction.

The tenant also had an issue with the dirty condition of the carpet, which was evidently not cleaned properly before she took residency in the suite. The landlord acknowledged that the carpet was old and was possibly not as clean as it could be as the landlord relied on the out-going tenant to do the proper cleaning of the carpet.

The tenant was also requesting that the landlord supply an additional key and comply with the Act by not overcharging. The tenant felt that imposing a non-refundable fee of \$20.00 was not permitted under the Act.

The tenant described issues that bothered her about the tenancy and the landlord's response to problems that occurred.

### **Analysis**

Section 28 of the Act protects a tenant's right to quiet enjoyment. This right applies to other residents in the complex as well as the tenant herself.

If the tenant had engaged in the conduct described, there is no doubt that this would constitute significant interference and unreasonable disturbance of other occupants or the landlord. However, the question of what occurred is not an easy determination to make with nothing more than the conflicting verbal testimony before me particularly as the burden of proof was on the landlord.

In particular, when the tenant's conduct became bothersome, the landlord had an obligation to issue a written warning to make sure that the tenant understood that her conduct may risk termination of the tenancy if it did not cease. Ending a tenancy is a drastic measure that is seen as a last resort. I find that it is a fundamental principle of natural justice that a party has the right to be warned of the consequences of the behaviour and be given a fair opportunity to correct the behaviour. The testimony from the witness confirmed that the tenant has made some changes in the offending conduct.

Given the above, I find it necessary to cancel the One Month Notice. However, the tenant is cautioned that this decision will serve as a warning and the tenant is now aware that if the conduct is repeated, it could function as a valid reason justifying the landlord to issue another Notice to terminate tenancy for cause under section 47 of the Act. I have issued an Order in favour of the landlord compelling the tenant to refrain from disturbing or noisy behaviour. In cancelling this Notice, I encourage the parties to communicate in written form in regards to tenancy-related concerns and to retain copies of all communications.

In regards to the tenant's concerns about the dirty carpet, I find that the landlord was required to provide a suite with a clean carpet from the start of the tenancy under section 32 of the Act. Accordingly I have granted an order in favour of the tenant requiring the landlord to have the carpets cleaned.

In regards to the provision of an extra key at a reasonable cost, I have issued an order in favour of the tenant requiring the landlord to comply with the Act by having a key copied for the tenant and imposing a refundable deposit that is not exorbitant.

**Conclusion**

Based on the above, I hereby order that the One-Month Notice to End Tenancy for Cause dated October 5, 2010 to be cancelled and of no force nor effect.

The tenant is ordered to comply with the Act by to refraining from disturbing or noisy behaviour.

The landlord is ordered to comply with the Act by cleaning the carpets and issuing an additional key for a refundable deposit in a reasonable amount.

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: November 2010.

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Dispute Resolution Officer