

DECISION

Dispute Codes CNC, OPC, FF

Introduction

This hearing dealt with applications from the landlords and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The tenants applied to cancel the landlords' One Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*. The landlords applied for an Order of Possession for cause pursuant to section 55 of the *Act*. Both parties applied to recover their filing fees for their applications from the other parties.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that the landlords handed the tenants the One Month Notice to End Tenancy for Cause on October 29, 2010. The tenants testified that they handed the landlords their application for dispute resolution hearing package on November 5, 2010. The landlords testified that they handed the tenants their application for dispute resolution hearing package on November 10, 2010. Both parties confirmed receiving these documents from one another. I am satisfied that these documents were served by the parties in accordance with the *Act*.

Issues(s) to be Decided

Should the landlords' One Month to End Tenancy for Cause be dismissed? Should the landlords be issued an Order of Possession? Should either of the parties be allowed to recover their filing fees for their applications?

Background and Evidence

This month to month tenancy commenced on November 1, 2009. Monthly rent is set at \$950.00. The tenants are responsible for paying \$125.00 in monthly utility charges. The landlords continue to hold the tenants' \$525.00 security deposit paid on October 24, 2010.

In their oral and written evidence, the landlords alleged that the tenants refused to turn down music on a number of occasions when requested to do so. They also testified that the tenants seemed to go out of their way to cause noise and disruption to the landlords who live upstairs from the tenants' basement suite. The landlords also maintained that the tenants were smoking in the rental premises which was against the terms of their tenancy agreement. The landlords entered oral and written evidence regarding the male tenant's behaviours which they considered threatening. The female landlord provided evidence regarding an incident where she maintained the male tenant had threatened her. The female landlord testified that she is very worried for their teenaged daughter who is afraid to return to their house without someone accompanying her because of her fear of the male tenant.

The landlords provided a written statement from their next door neighbour. In that statement, the neighbour reviewed the details of an incident where the male tenant had allegedly uttered a threat to her and her baby. She called the police who attended the premises and discussed the situation with the neighbour and the male tenant. The neighbour also attended the hearing and provided oral testimony to confirm the written statement that the landlords submitted as evidence.

The male tenant directed most if not all of his oral testimony towards his contention that the landlords had not proven that their noise allegations were valid. He said that it was often the landlords and the neighbour who were responsible for noise and disruption to the tenants' quiet enjoyment of their premises. He provided examples of noisy incidents where the landlord and neighbour or their children were responsible for noise that was disturbing to the tenants. He also reviewed the timing of two "warning letters" sent to him by the landlord, noting that the most recent one was issued on October 25, 2010, 13 days after the alleged incident. He noted that the landlords advised him in that letter that "If an incident like this or a breach in the landlord contract occurs again it will result in tenancy termination." He maintained that there have been no further noise incidents

since then, yet the landlords issued the tenants the One Month Notice to End Tenancy for Cause four days later on October 29, 2010.

The female tenant testified that she has been home quite a lot recently and conceded that both parties create noise. She noted that the landlords are not likely aware of how easily the noise from their living quarters is heard in the basement suite where the tenants live. She also said that the heating vents are very noisy as is an alarm that seems to sound each time someone enters the landlords' premises. Her son also provided evidence regarding the noise in the rental unit.

Analysis

The landlord has issued a one month notice to end tenancy for cause on the basis of the following subsections of section 47(1) of the *Act* because:

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property...

(e) the tenant... has engaged in illegal activity that

(ii) has adversely affected or is likely to affect the quiet enjoyment, security, safety or physical well-being of another occupant,...

When a landlord issues such a notice and the tenant disputes the notice the onus is on the landlord to prove cause for issuing the notice.

At the hearing, the landlords testified that they erred in completing that portion of the notice that alleged that the tenants had engaged in illegal activity. They withdrew that portion of their notice to end this tenancy.

Given the conflicting testimony, much of the assessment of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most

frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions...

In addition to the manner and tone (demeanour) of the witness' evidence, I have considered their content, and whether it is consistent with the other events that took place during this tenancy.

The landlords' notice to end tenancy for cause was based on at least the following three major areas of concern where they maintained that the tenants significantly interfered with or unreasonably disturbed them.

1. Noise
2. smoking in the rental unit, and
3. threatening behaviour by the male tenant.

The landlords also maintained that the tenants interfered with and disturbed their neighbour. However, as I noted during the hearing, the *Act* does not allow a landlord to cancel a tenancy on the basis of disturbing or interfering with anyone other than the landlord or another occupant of the rental property.

Noise

There was considerable conflicting evidence provided regarding who was responsible for noise, leading to frequent visits by the police to this property. On occasion, there

appear to have been simultaneous calls to the police complaining about the source of the noise disturbances.

The tenants devoted most of their oral testimony and questions to the landlords and the neighbour to disproving the landlords' allegation that the noise from their rental unit significantly interfered with or unreasonably disturbed the landlords. I find that the male tenant raised valid questions regarding the timing of the landlords' raising of issues related to the playing of music and noise emanating from the tenants' rental unit. The male tenant questioned why it took the landlords 13 days to send their letter about loud music on October 11, 2010. The landlords did not offer sufficient responses to the questions the male tenant raised about the credibility of the landlords' raising of concerns about the tenants' playing of loud music.

I find the female tenant's demeanour during the hearing convinced me of her credibility with respect to the complaints of noise. She presented her evidence in a calm and candid manner, and never wavered in her version of what happened. She also made some important admissions, including the fact that there was likely an element of truth to both parties' claims that noise from the other party was disturbing at times.

I find that the landlords have not proven to the extent necessary that the tenants' playing of loud music was an ongoing issue of concern during this tenancy or provided them with a valid reason to end this tenancy on that basis.

Smoking

Neither party addressed this issue in detail. I find the landlords have not satisfied the onus on them to demonstrate that the tenants' alleged smoking in the rental premises was sufficient to end this tenancy.

Threatening Behaviour

The landlords provided considerable evidence to support their assertion that the female landlord and her teenaged daughter felt threatened by the male tenant. The landlords

entered oral and written evidence that the male tenant's behaviour worsens considerably when he is consuming alcohol, which they allege is a too frequent occurrence. The female tenant provided detailed oral testimony regarding the incidents which lead her and her daughter to feel threatened by the male tenant and his continued stay in her house. Although disputes that extend beyond the boundaries of the rental property (e.g., between the tenant and the neighbour or tenants in the neighbour's building) do not present grounds whereby a landlord can cancel a tenancy for cause, the female landlord's fears regarding the male tenant are clearly increased by her understanding of the threats attributed to the male tenant against her neighbour and her neighbour's baby.

The tenants directed most of their remarks towards the noise and loud music issues identified by the landlords. The male tenant did not question, dispute or address the allegations cited by the landlords. Based on his failure to address the allegations about his statements to the landlord and her neighbour, I conclude that he did in fact make disturbing statements which are clearly upsetting to the female landlord and her daughter. I find the female landlord is genuinely afraid for her safety and that of her daughter if this tenancy is allowed to continue. On the basis of the undisputed evidence regarding the male tenant's behaviour, I find that the female landlord has been significantly interfered with or unreasonably disturbed by the male tenant. On this basis, I dismiss the tenants' application to cancel the One Month Notice to End Tenancy and issue an Order of Possession to the landlords as set out below.

Since the landlords have been successful in their application, I allow them to recover their filing fee for this application from the tenants. I direct the landlords to retain \$50.00 from the tenants' security deposit to recover their filing fee. The tenants will absorb the cost of filing their application.

Conclusion

The landlords are provided with a formal copy of an Order of Possession effective at one o'clock in the afternoon on December 31, 2010. Should the tenant(s) fail to comply

with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlords to recover their filing fee for this application by retaining \$50.00 from the tenants' security deposit. I make no order regarding the recovery of the tenants' filing for their application.

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*.