



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, MT, OLC, FF

Introduction

This hearing dealt with an application by the tenant to cancel a 1 month notice to end tenancy for cause, allow a tenant to make more time to make an application, to have the landlord comply with the Act and recovery of the filing fee. Both parties participated in the conference call hearing.

Issues to be Decided

Are the tenants entitled to any of the above under the Act.

Summary of Background and Evidence

On December 1, 2010 the landlord served the tenants with a notice to end tenancy for cause: significantly interfered with or unreasonably disturbed another occupant or the landlord; caused extraordinary damage to the unit/site; seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The tenants testified that all of the evidence submitted regarding the noise, smoking, public urination, domestic fights and abusive language towards others by the tenants is simply unfounded and not true. The tenants also stated that like any couple, they have had a few arguments however they do not fight and there has never been any domestic abuse.

The tenants stated that the building is old and the walls thin and that is why people can hear their tv, stereo and conversations. The tenants said that they often hear the tv in the unit below them and beside them.

The landlord's agent testified that the tenant's wife had admitted to her that the cigarette butts on the roof were her husband's. The landlord's agent stated that both she and tenants in the building have been subject to verbal assaults by the male tenant and that other tenants in the building are afraid of him.

The landlord's witness has submitted a log of disturbances related to a loud tv, video games, stereo and fights between the tenants; these disturbances often occur on a weekly basis with incidents going back to August 2009.

On November 15, 2010 the male tenant went to the witness's door at 1:30AM, loudly pounded on the door and when the door was opened, verbally threatened the witness. The witness then called 911 and had the RCMP attend to meet with the male tenant and discuss the matter.

A witness statement submitted by a neighbour refers to a number of occasions where the male tenant was observed smoking and drinking by the trash bin and then urinating in public; on one occasion the RCMP were called to attend. After the police left the tenant spent the next hour watching the witness's windows, making gestures that he was 'watching them' and making rude gestures. The witness's now feel threatened and intimidated by the tenant and fear retaliation.

Although there is no proof as to who was responsible for this act of vandalism, both witness's have recently had tires on their vehicles slashed.

Analysis

Residential Tenancy Act **Section 28 Protection of tenant's right to quiet enjoyment**

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.

The evidence and testimony upholds the notice to end tenancy for cause in that the tenant's actions have significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Based on the documentary evidence and undisputed testimony of the landlord's agent, witness and witness statements, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to an order of possession.

The date the tenancy ends on the December 1, 2010 notice to end tenancy for cause self-corrects to January 31, 2011.



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I hereby dismiss the tenant's application without leave to reapply.

Conclusion

I hereby dismiss the tenant's application without leave to reapply.

I hereby grant the Landlord an **Order of Possession** effective not later than **1:00 PM, January 31, 2011**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: December 22, 2010

Dispute Resolution Officer