



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Code: ET

Introduction:

This is the Landlord's application for an early end to the tenancy and an Order of Possession.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that on December 2, 2010, she mailed each of the Tenants the Notice of Hearing Documents and copies of the Landlord's evidence, by registered mail to the rental unit. The Landlord provided copies of the registered mail receipts, tracking numbers and printouts of the Canada Post searches in evidence. The printouts indicate that the male Tenant accepted delivery of both of the packages on December 6, 2010.

Based on the affirmed testimony and documentary evidence provided by the Landlord, I am satisfied that the Tenants were duly served with the Notice of Hearing documents and copies of the Landlord's evidence in accordance with the provisions of Section 89(1)(c) of the Act. Despite being served with the documents, the Tenants did not sign into the teleconference and the Hearing continued in their absence.

Issue to be Determined:

Has the landlord show that there is cause to end this tenancy and that it would be unreasonable or unfair to wait for a one month Notice to End Tenancy under the *Act* to take effect?

Background and Evidence:

The Landlord inherited this tenancy in September, 2010. The parties entered into a tenancy agreement on September 13, 2010. A copy of the tenancy agreement was entered in evidence. This is a month-to-month tenancy. Monthly rent is \$950.00, due on the first day of each month. The Tenants paid a security deposit to their former landlords on June 15, 2010, in the amount of \$475.00.

The Landlord testified that the female Tenant threatened to kill the upstairs tenant on November 26, 2010 in a drunken state over an disagreement about parking at the rental property. The Landlord testified that the Tenant also called her that evening and left a message on her answering machine repeating the threat to kill the upstairs tenant. The Landlord testified that she will not go to the rental unit by herself because she is afraid of the female Tenant. The Landlord testified that the female Tenant is often drunk and drinking causes her to become confrontational and violent. The Landlord provided a written statement from the upstairs tenant and a CD of the voice mail in evidence.

The Landlord testified that the rental unit is a non-smoking unit and that the Tenants smoke cigarettes and marijuana in the rental unit. This disturbs the upstairs Tenants, who are non-smokers. The Landlord testified that she is concerned about the female Tenant causing a fire because she is often drunk. On one occasion, the Landlord had to replace a battery in the smoke alarm and warn the Tenants about ensuring the smoke alarm was always operating properly.

Analysis:

In making an application for an early end to this tenancy the landlord has the burden of proving that there is cause for ending the tenancy, such as unreasonably disturbing other occupants, seriously jeopardizing the health and safety or lawful right or interest of the landlord and placing the landlord's property at significant risk, and by proving that it

would be unreasonable or unfair to the landlord or other occupants to wait for a one month Notice to End Tenancy for cause under Section 47 of the *Act* to take effect.

Although the Tenants have breached the tenancy agreement by smoking in the rental unit, this is not sufficient cause to end the tenancy early. I am satisfied that there may be cause to end this tenancy on this ground pursuant to section 47 of the *Act*; however, I do not find it is unfair or unreasonable for a one month Notice to End Tenancy to take effect with respect to the Tenants' breach of the non-smoking rules.

The written testimony of one of the upstairs tenants attests that the female Tenant became aggressive because the upstairs tenant parked his car in the driveway. He attests that the female Tenant was drunk and stated. "I'm going to kill you, you f—king honkey" (reproduced as written).

The CD provided in evidence is a recording of a female, in an intoxicated state. I accept the Landlord's affirmed testimony that it is the voice of the female Tenant and that the message was left on the Landlord's answering machine on November 26, 2010 at 7:59 p.m. The female Tenant uses expletives throughout the message and states in the message that she will kill the upstairs tenant.

Based on the undisputed affirmed testimony and evidence of the Landlord, I am satisfied that the Landlord has proven that there is cause to end the tenancy and that it would be unreasonable or unfair to the Landlord and the upstairs tenants to wait for a one month Notice to End Tenancy for cause to take effect. I find that the female Tenant has unreasonably disturbed one of the upstairs tenants by uttering threats to kill him.

I hereby provide the Landlord with an Order of Possession effective **2 days after service of the Order upon the Tenants.**

Conclusion:

I hereby provide the Landlord an Order of Possession **effective two days from service of the Order upon the Tenants**. 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 15, 2010.
