

## **DECISION**

### **Dispute Codes:**

CNC

### **Introduction**

The tenant applied to cancel a notice ending tenancy for cause and for compensation as the result of damage or loss under the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### **Mutually Settled Agreement**

During the hearing the parties came to a mutually settled agreement that this tenancy would end effective March 31, 2010, at 1 p.m. The tenant reflected on the options available to her, as she had applied to cancel a notice ending tenancy for cause and she elected, after much discussion and consideration, to enter into a mutual agreement with the landlord. The tenant understood that this settled agreement was made freely and she determined a settled agreement was preferable to adhering to whatever finding might be made.

The terms of the mutual agreement include:

- The tenancy will end effective 1 p.m. on March 31, 2011; The tenant may give proper written notice as required by the Act to end the tenancy earlier by providing written notice to the landlord; and
- The landlord will be issued an Order of possession effective March 31, 2011, at 1 p.m.

The tenant is aware that if she wishes to end her tenancy effective January 31, 2011, she must give the landlord written notice no later than December 31, 2010. If the tenant wishes to give notice ending the tenancy on February 28, 2011, she must give the landlord written notice no later than January 31, 2011.

### Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$2,259.00 for the loss of quiet enjoyment?

### Background and Evidence – Monetary Claim

The landlord planned on giving the tenant a notice ending her tenancy effective the end of October, 2010. The tenant first became aware of a potential issue when she discovered an advertisement for her unit in the paper on September 29, 2010. The tenant approached the landlord to discuss the advertisement as she had not been given notice ending the tenancy.

The parties do not agree on the discussion that occurred but the landlord has acknowledged that the advertisement was placed in anticipation of serving a notice before the end of September. The landlord submitted that when the tenant approached him to discuss the advertisement he told her that a notice ending tenancy would be issued; the tenant denied the landlord disclosed this to her.

During the month of October people drove down the cul de sac to view the tenant's home; they would meet with the landlord on his sidewalk to view and discuss her home. The tenant found this very disturbing and stressful and submitted the loss of quiet enjoyment that resulted entitles her to compensation in the sum equivalent to 3 months rent paid since September.

The landlord did not intend to cause any stress to the tenant and felt that if he had been prepared to issue the notice before the end of September he would have vacant possession for November 1. The landlord could not obtain advice he needed before he could serve the notice ending tenancy and subsequently gave it to the tenant on October 25, 2010.

After the advertisement was placed the landlord had 4 prospective tenants come to view the home from the street and 2 attend at the landlord's house during the month of October.

The tenant confirmed that no one ever entered onto her property or came into the home to view it.

### Analysis

Residential Tenancy Branch Policy suggests that a claim for quiet enjoyment must include consideration of factors such as the amount of disruption suffered by the tenant, the reasons for the disruptions and whether or not the landlord made his best efforts to minimize any disruptions to the tenant. I find this to be a reasonable policy.

There is no evidence before me that the amount of reported disruption caused any loss to the tenant. The tenant provided no dates of disturbances caused, no evidence of frequency and no evidence of any discussion with the landlord in an attempt to minimize the claim she is now making. The conversation that did occur is in dispute and the tenant made no other effort to communicate her concerns to the landlord, such as providing him with written notice of disturbances.

I find that there is no evidence before me that the landlord has breached the Act by allowing people to come and view the home from a point that was not on the residential property. While it would have been disturbing to the tenant to find that her unit was being advertised, she did speak to the landlord, who, according to the tenant, told her that he would be issuing a notice ending tenancy. While the tenant stated this conversation did not take place; even if it had not, I would make the same finding; that the tenant has not proven the landlord breached the Act or that she suffered a loss of quiet enjoyment to the degree that would support a claim equivalent to 3 months rent paid.

Therefore, I find that the tenant's monetary claim is dismissed.

### Conclusion

The parties have reached a mutual agreement ending this tenancy effective March 31, 2011.

By mutual agreement the landlord has been issued an Order of possession that is effective March 31, 2011, at 1 p.m. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The tenant's monetary claim is dismissed.

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 03, 2010.

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Dispute Resolution Officer