



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, LRE, FF

Introduction

This was the continuation of the hearing of an application by the tenant for an order cancelling a one month Notice to End Tenancy for cause. The matter was first heard on September 22, 2010 and was adjourned to October 28, 2010 to allow the parties to have an opportunity to discuss a settlement of the matters in dispute. On or about September 27, 2010 the landlord issued a second one month Notice to End Tenancy for cause. The tenant applied to dispute the Notice and her application was scheduled to be heard at the same time as the reconvened hearing from September 22, 2010. The reconvened hearing was held at the Residential Tenancy Office in Burnaby. The tenant attended with her lawyer. The landlord's agent attended, but the landlord did not attend the hearing. I contacted the landlord by telephone; he said that he was confused about the time for the hearing. He thought the hearing was scheduled for 4:00 P.M., not 1:00 P.M.

The second Notice to End Tenancy issued by the landlord was incorrectly dated October 27, 2010 and required the tenant to move out of the rental unit by October 31, 2010. The landlord did not present any new evidence in support of the Notices to End Tenancy.

Background and evidence

The tenant has occupied the rental unit for many years. Her mother occupied the rental unit before her and her tenancy began in or about 1972. The landlord has alleged that several occupants have complained about late night noise from the tenant's apartment. The landlord produced two letters. In one of the letters a occupant of the apartment

below the tenant said he would be moving out at the end of August due to the night-time noise from the tenant. This occupant did not attend the hearing and the landlord did not provide any other evidence from the occupant. According to the tenant he has not moved out and he has made no other complaints. The tenant offered to work with him to resolve any noise problems.

According to another letter submitted by the landlord an occupant who formerly lived beneath the tenant chose to move across the hall to a different apartment to avoid noise created by the tenant. This occupant did not attend the hearing. The tenant testified that the occupant chose to move because she wanted a larger apartment.

Analysis and conclusion

The landlord has never given the tenant notice in writing or any form of written warning that other occupants have complained about her or have been disturbed by her.

The landlord failed to attend at the reconvened hearing and failed to provide direct evidence from occupants who claim to have been disturbed by the tenant. I find that the grounds alleged by the landlord in the two Notices to End Tenancy that he issued have not been proven on a balance of probabilities. I order that the two Notices to End Tenancy, the first dated July 31, 2010 and the second dated October 27, 2010 be, and are hereby cancelled. The tenancy will continue.

The tenant is entitled to recover the filing fees paid for her two applications to dispute the Notices to End Tenancy. The tenant may deduct the sum of \$100.00 from a future instalment of rent.

Dated: November 2, 2010.
