

## **DECISION**

**Dispute Codes:** OPC and FF

### **Introduction**

This application was brought by the landlord seeking an Order of Possession pursuant to a one- month Notice to End Tenancy for cause served on November 30, 2010 and recovery of the filing fee for this proceeding.

At the commencement of the hearing, the advocate for the tenant raised two preliminary matters.

On the first, she noted that the Notice to End Tenancy served on November 30, 2010 had been served by posting which would be deemed under section 90(c) of the *Act* to have been received three days later. Therefore, the end of tenancy date would automatically correct to January 31, 2011 under section 53 of the *Act*.

On the second preliminary matter, the advocate stated that she did not have a copy of the landlord's application and was therefore at a disadvantage in not knowing the case against the tenant.

The landlord provided a copy of a Canada Post registration number for the hearing package for the tenant verifying that it had been sent on January 10, 2011 and received

by the tenant. The landlord stated that all evidence and copy of her application were included in the package. She stated that she had also served the same documents to the tenant in person.

I accepted the evidence of the landlord with respect to service and the hearing proceeded.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to an Order of Possession and recovery of the filing fee for this proceeding from the tenant.

### **Background and Evidence**

This tenancy began on November 1, 2010. Rent is \$1,000 per month and the landlord holds a security deposit of \$500.

During the hearing, the landlord submitted a copy of a warning letter to the tenant dated November 8, 2010 noting that in the first week of the tenancy she had received more than 10 complaints regarding late night disturbances of other tenants including herself.

The letter cited a man throwing rocks at the tenant's window, noisy children and men talking loudly on the telephone on the balcony. The letter warned that further disturbances would lead to eviction.

The tenant was served with a formal breach letter dated November 10, 2010 which added loud bass on the tenant's television or stereo to the complaints.

On November 29, 2010, the landlord served the tenant with a third letter repeating complaints of disturbance of others, adding that the tenants in the unit below were no longer able to sleep in their bedroom and referring to food items being dropped.

The landlord submitted two letters of complaint from other tenants regarding the noise in the rental unit and stated that neighbouring tenants are threatening to move out because of it.

The landlord stated that, despite the three letters and the Notice to End Tenancy, in addition to numerous in person discussions with the tenant, the disturbances had continued through December and January and, in fact, the tenants in the unit below had left their tenancy for that reason.

The tenant's advocate noted that the tenant had four children of ages five to 16 years and that her agency had been working with the tenant to help her find more appropriate housing, among other things.

## **Analysis**

Section 47(1)(d)(i) of the *Act* provides that a landlord may issue a one month Notice to End Tenancy for breach in circumstances in which a tenant or person permitted on the property by the tenant has, "significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property."

Tenants may make application to contest a Notice to End Tenancy for cause within 10 days of receiving it or, if they do not do so, under section 47(5), they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice.

In this matter, the tenant has not made application to challenge the notice and, therefore, would be required to vacate the rental unit by January 31, 2011.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant.

The landlord made promise that, if the tenant was able to prevent disturbance of other tenants in the interim, she would postpone enforcement of the Order of Possession until February 28, 2011. However, if the landlord continues to receive noise complaints, she may serve the order at her discretion.

As the landlord's application has succeeded on its merits, I find that she is entitled to recover the filing fee for this proceeding from the tenants and may do so by retaining \$50 from the tenant's security deposit.

## **Conclusion**

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenant.

The landlord may retain \$50 of the tenant's security deposit to recover the filing fee for this proceeding.

January 24, 2011