

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application disputing a 1 month Notice to End Tenancy for Cause. Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

### Issue(s) to be Decided

Has the tenant breached the tenancy agreement or *Act* entitling the landlord to an Order of Possession?

### Background and Evidence

This tenancy began on March 1, 2010 for the monthly rent of \$1,200.00 and a security deposit of \$600.00 paid on February 28, 2010.

The landlord served the tenant with a 1 month Notice to End Tenancy for Cause on November 30, 2010. The states reasons for the notice to end the tenancy was that the tenant was repeatedly late paying rent and the tenant had unreasonably disturbed another occupant or the landlord. Neither the landlord nor the tenant provided a copy of the notice for this hearing.

The landlord submits that the tenant has been late with her rent on 5 occasions. The landlord stated that they received posted cheques from the tenant on October 5 and November 5, 2010 and the tenant did not have prior written approval to pay the rent late. In addition, the landlord submits that the tenant paid the rent late in April and May 2010, but acknowledges that there was no evidence of the late payments.

The landlord also submits that the tenant has unreasonably disturbed other occupants by being too load in the rental unit and smoking marijuana. The landlord stated that he spoke to the tenant about the issues in May 2010 and again in September 2010. The landlord issued a written letter to all tenants on October 12, 2010 about parking issues, payment of rent and no smoking of recreational drugs.

The tenant denied the landlord's allegations and stated that her rent was not late in April or May 2010 and that the landlord was aware that her rent cheques for October and November 2010 were posted dated to the 5<sup>th</sup>. With respect to the noise issues the tenant confirmed that she stopped using the laundry after 10:00 p.m. but denies any issues with how load she talks. The tenant also stated that she previously used to smudge in her unit but after receiving some complaints she no longer does this.

The landlord requested an Order of Possession and the tenant requested that the tenancy continue.

### Analysis

I grant the tenant's application and find that the 1 month Notice to End Tenancy for Cause should be set aside. I am not satisfied that the landlord has demonstrated grounds to end this tenancy pursuant to section 47 of the *Act*.

The landlord had not demonstrated that the tenant has been repeatedly late paying rent and based on the evidence only showed that the tenant provided 2 cheques dated on the 5<sup>th</sup> rather than on the 1<sup>st</sup>. I remind both parties that the tenancy agreement provides that rent must be paid by the 1<sup>st</sup> of each month.

With respect to disturbing other occupants or the landlord, I am not satisfied that the tenant has continued with behaviours which are unreasonably disturbing other occupants. I acknowledge that the tenant previously received a verbal warning in May 2010. The tenant has not received a written warning prior to the landlord issuing the notice to end tenancy and I am not persuaded that the landlord notified the tenant that complaints were still being received about noise. The tenant should be notified of any breach of the tenancy agreement or disturbances in writing and provided a reasonable opportunity to correct the breach.

I find that the 1 month Notice to End Tenancy was premature and I set it aside.

### Conclusion

The tenant's application is granted and I have set aside the 1 month Notice to End Tenancy. This tenancy shall continue with full force and effect. I grant the tenant's request to recover the \$50.00 filing fee paid for this application from the landlord. The tenant may deduct \$50.00 from her rent owed on February 1, 2011 in satisfaction of this order.

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: January 06, 2011.

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Residential Tenancy Branch