

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant to cancel a 1 month notice to end tenancy for cause. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This tenancy began July 2010. On January 26, 2011 the landlord served the tenant a 1 Month Notice to End Tenancy for Cause: allowed an unreasonable number of occupants in the unit/site; significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk; damaged the landlord's property; adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord testified that although the notice of hearing documents were received by his office on or around February 15, 2011, the landlord had not had time to submit his evidence package. The landlord requested more time to submit his evidence however as the landlord had sufficient time to respond to the tenant's application the hearing proceeded.

The landlord stated that many of the issues regarding the 1 month notice to end tenancy for cause center around the tenant having 10-15 guests by her apartment on a daily basis and having 2 to 3 overnight guests at a time in her bachelor suite. The landlord stated that the tenant has been seen using a ladder to access her rental unit via her balcony when inadvertently locked out and was observed sliding down the roof that has shake shingles potentially causing damage to the roof. The landlord stated that one of the tenant's frequent guests is a person who is well known to the local RCMP detachment and the landlord feels that this person's presence on the property puts the landlord's property at risk.

The tenant testified that the landlord's allegations are untrue and the tenant has submitted letters of support from three residents in the building. The tenant submitted evidence that the landlord has advised her that she has to limit the number of quests in

her rental unit, that vehicles belonging to the tenant's guests will be immediately towed from the parking lot and that the tenant may not have overnight guests.

The tenant admitted that she does have guests over but that they do not disturb the other tenants. It was clarified in this hearing that while the tenant has a right to peace and quiet enjoyment, the tenant's neighbours have that right also.

Law

Residential Tenancy Policy Guideline **6. Right to Quiet Enjoyment**

*This guideline deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. At common law, the covenant of quiet enjoyment "promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy."*¹ A landlord does not have a reciprocal right to quiet enjoyment.

*The Residential Tenancy Act and Manufactured Home Park Tenancy Act*² (the Legislation) establish rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy
- freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Basis for a finding of breach of quiet enjoyment speaks to:

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- entering the rental premises frequently, or without notice or permission;
- unreasonable and ongoing noise;
- persecution and intimidation;
- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,
- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Analysis

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the Notice to End Tenancy for Cause.

Accordingly, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

Conclusion

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy for Cause dated January 26, 2011 with the result that the tenancy continues uninterrupted.

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: February 25, 2011

Residential Tenancy Branch