

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issues to be Decided

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

### Summary of Background and Evidence

This tenancy started November 1, 2010 with monthly rent of \$1400.00, the tenant paid a security deposit of \$700.00. On January 14, 2011 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause: significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that the tenants in the upper unit have written to them due to the continued disturbance from the crying of the downstairs tenant's baby, screaming from the tenant's 4 year old daughter and loud tv. The upstairs tenants have noted in their letter to the landlord that if the situation does not improve that the tenants will have to provide the landlord notice to vacate and seek housing elsewhere. The landlord contends that the noise, which is a daily and nightly occurrence, has greatly affected the peace and quiet enjoyment of and has started to impact the personal relationship of the upstairs tenants.

The landlord stated that the upstairs tenants have resided in the rental unit for some time and never before have there been noise issues with the tenants that have resided in the lower unit. The landlord stated that he spoke to the upstairs tenants the evening prior to this hearing and they advised the landlord that the situation has not improved and to try and get away from the noise late at night the upstairs tenants no longer sleep in their bedroom but use a room at the opposite end of the house. The landlords also stated that they have both been in the upstairs tenants unit and been witness to the noise coming from the lower unit.

The landlord contends that while the issue was not discussed in January with all parties present, the downstairs tenant has not taken steps throughout the past month to address the concern and minimize the noise.

Per Section 55 of the Act the landlord has made a verbal request in this hearing for an order of possession effective February 28, 2011 should the notice to end tenancy for cause be upheld. The landlord stated in this hearing that if the notice to end tenancy is upheld and the tenant requires more time to find new housing the landlord may be willing to extend the date the tenant has to vacate by.

The tenant testified that she was willing to discuss the matter with the tenants and landlord but that the landlord advised her that would not be happening. The tenant stated that her 4 year old is now in daycare 2 times a week and that both children are in Whistler on Saturdays. The tenant stated that her 20 months old only wakes up once late at night now and that the noise from her 4 year old is just kids playing.

The tenant had originally advised the landlord that she would look for alternate housing but in this hearing stated that her home life is stable and she does not want to relocate at this time.

## Law

### Residential Tenancy Guideline **6 Right to Quiet Enjoyment**

#### Basis for a finding of breach of quiet enjoyment

*Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.*

*The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. 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;*

## Analysis

Based on the documentary evidence and undisputed testimony of the landlord, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds to have the notice to end tenancy for cause upheld and are entitled to an order of possession.

The tenant's application is hereby dismissed without leave to reapply with the resulting effect that the tenancy will end on February 28, 2011 at 1:00 PM.

As the tenant has not been successful in their application they are not entitled to recovery of the \$50.00 filing fee.

### Conclusion

The tenant's application is hereby dismissed without leave to reapply with the resulting effect that the tenancy will end on February 28, 2011 at 1:00 PM.

I hereby grant the Landlord an **Order of Possession** effective not later than **1:00 PM, February 28, 2011**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 8, 2011

---

Dispute Resolution Officer