

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause pursuant to section 47; and
- authorization to recover her filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence, to call and question witnesses, and to make submissions. The tenant confirmed having received the landlords' evidence package. The tenant did not provide any written evidence. The landlords testified that they posted their One Month Notice to End Tenancy for Cause (the Notice) on the tenant's door on January 22, 2011. The tenant testified that she left a copy of her dispute resolution hearing package for the landlords on February 3, 2011. Both parties confirmed having receiving the above documents. I am satisfied that the parties served one another with these documents.

During the hearing, the landlords made an oral request pursuant to section 55(1) of the Act for an Order of Possession if the tenant's application for cancellation of their Notice were dismissed.

Issues(s) to be Decided

Should the landlords' Notice be cancelled? Should the landlords be issued an Order of Possession? Is the tenant entitled to recover her filing fee for this application?

Background and Evidence

The parties testified that the tenant has been in various tenancies with the landlords for the past seven years. This one-year fixed term tenancy for the main floor of a two level duplex commenced on June 14, 2010. Monthly rent is currently set at \$1,250.00, payable on the 15th of each month.

The landlords entered into written evidence a copy of their January 22, 2011 Notice. In that Notice, requiring the tenant to end this tenancy by February 25, 2011, the landlords cited the following reasons for seeking to end this tenancy:

Tenant or a person permitted on the property by the tenant has:

- *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;*

Tenant has engaged in illegal activity that has, or is likely to:

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Although no written copy of the Residential Tenancy Agreement (the Agreement) was entered into evidence, the tenant did not dispute the landlords' assertion that the Agreement contains clauses preventing smoking, pets and roommates or co-habitants in the rental premises without the landlords' written permission. Similarly, the tenant did not dispute the landlords' claim that this Agreement required the tenant to take out tenant's insurance for the rental premises.

The landlords entered oral and written testimony that the tenant has broken all four of the above clauses in the Agreement. The landlords also submitted into written evidence documents signed by the upstairs tenant who maintained that the tenant has significantly interfered with and unreasonably disturbed her quiet enjoyment of her rental premises. The landlords and the letter from the upstairs tenant maintained that the tenant and her male friend are unreasonably noisy, play loud music late into the night, and have been aggressive and intimidating during the recent portion of this tenancy. The upstairs tenant's written evidence provided considerable detail in the chronology of times and events she provided regarding the tenant's actions. She has had to leave her rental suite a number of times and stay with friends when the noise from the tenant's suite became excessive. The landlord testified that the upstairs tenant plans to vacate her rental unit if the landlords' Notice were dismissed. The landlords also submitted oral and written testimony that many of their regular contractors refuse to work on this rental property if there will be any contact with the tenant who they maintain has been abusive and intimidating to them. The landlords also maintained that they and the upstairs tenant have witnessed smoking, noise and the frequent presence of the tenant's male friends' dog in this rental unit. The landlords testified that the partner of one of the landlords has developed an allergy to dogs and that dogs have not been allowed in this rental property since renovations were undertaken.

The tenant testified that the complaints of excessive noise are unfounded. She said that the upstairs tenant told her when she first moved into her unit in December 2010 that she experienced noise sensitivity. The tenant and her male friend who gave oral testimony stated that he does not live with her and his dog, but only visits the rental unit.

They denied affecting the upstairs tenant's quiet enjoyment of the rental premises. The tenant confirmed that she did not have tenant's insurance until January 14, 2011, although she realized that this was likely required under her Agreement. She said that there had never been a problem with her or others in this rental property keeping a pet on the premises in the past. The tenant read into evidence one email she received from a former tenant who lived in the same building as her.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around each are set out below.

At the hearing, I asked the landlords to identify the illegal activity they were referring to in a portion of their application. They said that the tenant or someone the tenant is allowing in the rental premises smokes in the rental unit and this is illegal. Although this may be contrary to the terms of the Agreement for this tenancy, this does not make the tenant's actions illegal. As such, I dismiss this ground from the landlord's Notice.

The tenant's failure to secure tenant's insurance was in contravention of her Agreement. However, I find that she did obtain this insurance within a reasonable period after receiving written notice from the landlords to do so. As such, I do not find that the tenant failed to correct this breach of a material term of the Agreement within a reasonable time after she received written notice to correct this deficiency. I dismiss this element of the landlord's Notice.

There is considerable conflicting testimony regarding the following aspects of the landlord's Notice to End this Tenancy:

- the duration and frequency of the presence of a pet in the rental unit;
- the duration and frequency of the tenant's male friend's presence in the rental unit;
- smoking on the rental property;
- noise and disturbance created by the tenant and her guest(s);
- interaction between the tenant and her male friend with the landlord, the landlord's contractors and the other occupant of this rental property.

Based on the evidence presented, the landlords have not demonstrated that the tenant's male friend uses the tenant's residence as his primary residence or the primary residence for his pet dog. However, I accept that the male tenant and his dog are spending enough time at the rental premises to potentially present noise, health and disturbance issues for the upstairs tenant and by extension the landlords.

Much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions...

In addition to the manner and tone (demeanour) of the witness' evidence, I have considered their content, and whether it is consistent with the other events that took place during this tenancy.

Landlord CB's demeanour during the hearing has convinced me of the credibility of the landlords' evidence regarding the noise, disturbance and loss of quiet enjoyment of the premises that is resulting from the tenant's behavior and that of her male friend. Landlord CB answered all questions asked in a calm and candid manner, and never wavered in her version of what happened. The landlords presented considerable written evidence from the upstairs tenant which I found specific, detailed and convincing. They also presented written evidence from contractors who have found interactions with the tenant so difficult that many of them refuse to conduct work in the landlords' property if any contact with the tenant is required.

The tenant's evidence and that provided by her male friend was not nearly as credible as that provided by the landlords. The tenant maintained that she did not have sufficient time to obtain and present evidence to support her claim that the behaviours and actions attributed to her are exaggerated and incorrect. However, I note that this was her application and, as such, she had more time to prepare her evidence than did the landlord. Although the tenant disputed evidence from the upstairs tenant and one of the contractors, she did not dispute the landlord's evidence regarding the remainder of the written and oral testimony provided by those who have performed work on this property for the landlord.

The tenant's male friend provided evidence on the tenant's behalf and denied that there is excessive noise coming from this rental suite, that he lives in the rental unit, and that his dog stays there. He also entered testimony regarding the nature of the

landlord/tenant relationship in this case, a relationship that has been in place for seven years. His credibility is somewhat reduced given his testimony that he has only known the tenant for the last 1 ½ months. I attach little weight to his oral testimony.

In total, I find that the oral and written evidence of the landlord far more convincing than the oral testimony of the tenant and her male friend. The tenant's claim and that of her male friend that they are not noisy and do not disturb the upstairs tenant does not match well with the level of detail provided by the upstairs tenant who the landlord described as "terrified" of the tenant and her male friend.

I am satisfied that the landlord has sufficient cause to have issued the tenant a One Month Notice to End Tenancy for Cause because the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

For that reason, I dismiss the tenant's application to cancel the landlords' Notice to End Tenancy.

In accordance with section 55(1) of the *Act* which reads as follows I grant the landlord the requested Order of Possession which will take effect at one o'clock in the afternoon on February 28, 2011.

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

Since the tenant has not been successful in her application, she is not entitled to recover her filing fee from the landlords.

Conclusion

I dismiss the tenant's application to cancel the landlord's One Month Notice to End Tenancy for Cause.

The landlord is provided with a formal copy of an Order of Possession effective at one o'clock in the afternoon on February 28, 2011. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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*.