

## **DECISION**

**Dispute Codes:** CNC

### **Introduction**

By application of July 8, 2011, the tenants sought to have set aside a Notice to End Tenancy for cause dated July 1, 2011 and setting an end of tenancy date of August 1, 2011.

As a matter of note, the applicants advised the Branch in writing on July 19, 2011 of their wish to cancel this hearing as the landlord “had voiced their desire to cancel the eviction.” .However, as branch staff members were unable to confirm the cancellation by telephone, the hearing was left on the schedule.

As matters turned out, when the hearing convened at 11 a.m. as scheduled, the landlord and the building manager were present for the telephone conference call hearing. They stated they had no knowledge of the tenants’ letter to cancel the hearing and that they had never indicated that they intended to withdraw the Notice to End Tenancy.

On being advised that, if the tenant did not attend, the application would be dismissed without leave to reapply, the landlord requested an Order of Possession under section 55(1) of the *Act* which compels issuance of the Order when a tenant’s application to set aside a notice is dismissed or the notice is upheld.

As it was concluding after 20 minutes, the male tenant joined the hearing with an explanation that his tardiness was due to his being unwell. The hearing then proceeded on its merits.

### **Issues to be Decided**

This matter requires a decision on whether the Notice to End Tenancy should be upheld or set aside and whether the landlord is entitled to an Order of Possession.

## **Background and Evidence**

This tenancy began on March 1, 2010. Rent is \$750 per month due on the first day of the month and the landlord holds a security deposit of \$375.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served after an ongoing series of incidents in which the conduct of the tenants and their guests had unreasonably disturbed the landlord and other occupants of the residential building and jeopardized a lawful right of the landlord.

The landlord submitted a copy of a letter from the male tenant dated December 1, 2010 in which he offered apology for having raised his voice at times, made explanation that doing so resulted from his illness and made promise that there would be no future occurrences of the sort.

The landlord and the building manager gave evidence that they had received five letters from other tenants complaining a screaming and yelling in the rental unit, admittance to the building troublesome guests and the strong smell of marijuana emanating from the rental unit despite numerous requests to desist by the building manager. In addition, they stated that police had been called to the rental unit on more than one occasion and on one, had taken a guest of the tenant into custody.

In one instance, the building manager encountered a frequent guest of the tenants who heard commenting that he had a \$20 sale referring to a drug deal. When the building manager asked him to leave, the guest threatened the manager with violence.

The tenant denied that he smoked marijuana in the rental unit.

## **Analysis**

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

Section 47(1)(e)(iii) allows for the notice in matters in which the tenant or guest “has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.”

I accept the evidence of the landlord and building manager that the tenants’ conduct has warranted the notice under both of the foregoing provisions of the *Act* and that the landlord has made more than reasonable efforts to resolve matters cooperatively.

Therefore, I found that the Notice to End Tenancy of July 1, 2011 is lawful and valid and I declined to set it aside.

On hearing that determination, the landlord again requested, and I find she is entitled to, an Order of Possession to take effect at 1 p.m. on September 30, 2011.

## **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 at 1 p.m. on September 30, 2011.

August 9, 2011