

DECISION

Dispute Codes OPC, CNC

Introduction

There are applications file by both parties. The Landlord has made an application for an order of possession as a result of a 1 month notice to end tenancy for cause. The Tenant has filed an application to obtain an order to cancel the 1 month notice to end tenancy for cause.

Both parties attended the hearing by conference call and gave testimony.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Tenant entitled to an order to cancel the notice to end tenancy?

Background and Evidence

This Tenancy began on May 7, 2011 on a month to month basis as shown in the submitted copy of the signed tenancy agreement. The monthly rent is \$700.00 payable on the 1st of each month. A security deposit of \$350.00 was paid on May 2, 2011.

Both parties have confirmed receipt of the notice of hearing and evidence packages filed by the Landlord. The Tenant did not submit any evidence. The Tenant has confirmed receipt of the notice package.

The Landlord states that the Tenant was served with the 1 month notice to end tenancy for cause on August 28, 2011. The Landlord has provided proof of service of the notice. The Tenant has confirmed receipt of the notice.

The Landlord claims that she has received noise complaints about the Tenant in his rental unit from the beginning of his Tenancy. The Landlord states that numerous verbal warnings were given to the Tenant. The Landlord states that the Tenant was first given written notice on June 17, 2011 of excessive noise. The Tenant states this particular incident was during the hockey playoffs. The Landlord states that she received a subsequent written noise complaint on August 17, 2011. A further verbal

warning was given to the Tenant by the Landlord. The Landlord states that they warned the Tenant about clause 4 in the conditions of tenancy which were initialled by the Tenant. Clause 4 states, "The tenant will not permit any disturbing noise in the premises at any time, and in particular between the hours of 11:00pm and 8:00am and the landlord shall have the right to proceed under the provision of this clause in the event that such disturbances do occur and result in written complaints from other occupants of the building." The Landlord states that a further written complaint was received on August 27, 2011 about the Tenant's excessive noise. The Landlord then served the Tenant with the 1 month notice to end tenancy for cause. The Landlord contends that verbal and written notices were given to the Tenant, which she states that he ignored.

Analysis

As both parties have attended the hearing and have made detailed reference to the evidence submitted by the Landlord, I am satisfied that each has been properly served. The Tenant has submitted no evidence.

As there is conflicted direct testimony of both parties, I find based upon the Landlord's submitted evidence of written complaints and notices that on a balance of probabilities that the Landlord has established a claim for an order of possession. The Landlord is entitled to an order of possession. The Tenancy is at an end on the effective date of the notice dated August 28, 2011 for September 30, 2011. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The Tenant's application is dismissed.
The Landlord is granted an order of possession.

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: September 30, 2011.

Residential Tenancy Branch