

## **DECISION**

### **Dispute codes**

CNC, FF

### **Introduction**

This hearing was convened in response to an application filed on August 26, 2011 by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the Notice to End) dated August 25, 2011, and to recover the filing fee for this application. The Notice to End was given with the reasons:

- *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 effect the quiet enjoyment , security, safety or physical well-being of another occupant, or the landlord.*
  - *jeopardize a lawful right or interest of another occupant or the landlord*

Both the tenant and the landlord appeared in the conference call and each participated in the hearing via submissions and affirmed / sworn testimony, as well as witnesses.

On September 07, 2011 the landlord filed late evidence, which the landlord testified they also mailed to the tenant, and which the tenant denies receiving by this hearing date. I have not considered this submission. None the less, the hearing proceeded on the merits of the testimony and evidence presented in the hearing.

At the outset of the hearing the parties were afforded an opportunity to resolve their dispute and the landlord verbally requested that their Notice to End be upheld via an order of possession.

For this type of application, the onus is on the landlord to prove the Notice to End was issued for sufficient reasons, and that at least one (1) reason must constitute sufficient cause for the Notice to be valid. The landlord is not required to prove all reasons stipulated for ending the tenancy.

**Issue(s) to be decided**

Is there *sufficient* cause to end the tenancy?

Is the landlord entitled to an Order of Possession?

**Background and evidence**

This tenancy began November 12, 2009. The tenant resides in a multi-unit residential complex.

The landlord testified they issued the Notice to End on August 25, 2010 in response to an incident on August 24, 2011, during which time the landlord claims the tenant's conduct toward the landlord / maintenance worker became threatening and intimidating. The parties do not dispute that a confrontation occurred on August 24, 2011. However, the tenant denies that he threatened and intimidated the landlord.

The landlord's maintenance worker (the landlord) testified that during the course of mowing the grass areas of the residential property, with a lawn tractor, he came upon the tenant's motorcycle ( a full-sized motorcycle / tricycle arrangement) parked on a grassy area - which the tenant has a history of doing, and for which the landlord has previously verbally cited the tenant to stop. The landlord stated he manoeuvred the tractor around the motor vehicle and soon thereafter was approached by the tenant, who appeared irate and was screaming at him, including calling the landlord a "fucking moron", and a "fucking asshole". The landlord testified that the tenant complained to him that he was angry that the landlord had apparently caused some grass clippings to happen upon the motorcycle. The landlord testified that the tenant loudly proclaimed he would get back at him if he caused grass to happen upon his vehicles again; and, that the tenant used his motorcycle to ride around the complex in an aggressive manor:

riding over the grass area amidst shouting and threatening the landlord. The landlord does not dispute that the parties engaged in an exchange of words. However, the landlord claims that he has been left feeling threatened and intimidated by the tenant's outbursts over this issue and his aggressive conduct with his motorcycle following the incident. The landlord does not trust that the tenant is capable of "keeping it together": keeping his emotions in check when it comes to his vehicles. The landlord also played a short telephone message recording at the hearing from the tenant (which is undisputed by the tenant is his message to the landlord), in which the tenant tells the landlord that some of his visiting motorcycling friends will not like the landlord 'tagging' their motorcycles while on the residential property. The landlord explained this was in response to the landlord placing an alert on the tenant's motorcycle for being improperly parked. The landlord purports the message speaks to the tenant's defiance toward the landlord and the landlord's responsibility to all tenants of the residential property.

The landlord presented two (2) additional witnesses – both of whom are also occupants of the residential complex. Each provided sworn testimony that they witnessed the tenant shouting and swearing at the landlord. One of the witnesses described the tenant as, "cursing him (landlord) down". Both witnesses also testified that they witnessed the tenant riding his motorcycle over grass areas during the incident of August 24, 2011. One of the witnesses described the tenant riding his motorcycle in a circle.

The tenant disputes the landlord's account of the subject incident and the landlord's assertions that he was intimidating to the landlord and that he is a threat to him. The tenant does not dispute that the incident made him angry. The tenant testified that his vehicle has a value of over \$17,000 and claims the landlord displayed contempt for this fact by not preventing grass clippings to land on his motorcycle. The tenant testified

that no permanent damage was caused or ever has been caused to his vehicle by the landlord and that the subject incident required only cleaning of the motorcycle.

### **Analysis**

I accept the testimony of the tenant and the landlord and I have reflected carefully on all relevant matters presented. On the preponderance of the evidence and testimony provided, and on the balance of probabilities I accept the landlord's testimony and evidence and find the landlord has met the burden of proof in showing he had *sufficient* cause to end this tenancy on the basis the tenant: *Significantly interfered with or unreasonably disturbed another occupant or the landlord and significantly jeopardized the health or safety or lawful right of another occupant or the landlord*

Therefore, I uphold the landlord's Notice to End as valid; and effectively, the tenant's application to cancel the landlord's Notice to End is **dismissed** without leave to reapply. The landlord is hereby entitled to an Order of Possession.

Section 55 of the Act, in part, states as follows:

**Order of possession for the landlord**

**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.

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

**Conclusion**

The tenant's application is **dismissed**. **I Order** the tenancy will end on the effective date of the Notice to End. I grant an **Order of Possession** to the landlord effective **Friday, September 30, 2011**. This Order must be served on the tenant. Should the

tenant then 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.

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*.