

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant confirmed that he received the landlord's 1 Month Notice posted on his door on August 30, 2011. The landlord confirmed that she received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on September 2, 2011. I am satisfied that the parties served these documents to one another in accordance with the *Act*.

At the commencement of the hearing, the landlord confirmed that the landlord has not applied for dispute resolution. She made an oral request for an Order of Possession should the tenant's application to cancel the landlord's 1 Month Notice be dismissed.

### Issues(s) to be Decided

Should the tenant's application to cancel the landlord's 1 Month Notice be allowed? If not and if the tenancy is ended in accordance with the 1 Month Notice, is the landlord entitled to an Order of Possession?

### Background and Evidence

The landlord provided undisputed oral testimony that this tenancy commenced initially as a three month fixed term tenancy for a room in a downtown Vancouver hotel on January 20, 2010. Once the fixed term expired, the tenant remained in the rental unit on a month-to-month tenancy. The parties agreed that they have no signed residential tenancy agreement. Monthly rent is set at \$450.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$225.00 security deposit paid on January 20, 2010.

The tenant entered into written evidence a copy of the 1 Month Notice requiring the tenant to end this tenancy by September 30, 2011. In the 1 Month Notice, the landlord cited the following reason for the issuance of the Notice:

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

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*

The landlord entered no written evidence in support of the 1 Month Notice or to obtain an end to this tenancy. The tenant provided written evidence, including photographs and copies of warning letters provided to the tenant by the landlord.

The landlord provided oral testimony that the tenant has been interfering with the landlord's business. She provided examples of the tenant's posting of notes and comments in public areas of the building regarding his claim that the landlord has not been conducting the business of a landlord properly. She objected to the tenant's criticisms about the way that the property is operated by the landlord. The landlord expressed dissatisfaction with the tenant's pursuit of a number of issues with the municipality before first raising these issues with the landlord. She testified that the tenant is very demanding and leaves profanity-spiced voice mail messages for the landlord. She said that she feels considerable stress as a result of this man's tenancy.

The landlord also maintained that the tenant lets people into the back door of the rental property which is supposed to be used only as a fire door. She provided an example of a situation where the tenant allegedly allowed a female visitor known to one of the other tenants in the building into the building. She said that this visitor then wrote on walls and broke into another tenant's rental unit stealing money from that tenant. This incident was outlined in one of the documents entered into written evidence by the tenant. The landlord confirmed that since warning the tenant about letting this individual into the rental property, she is unaware of any further incidents where the tenant allowed this visitor to enter the rental property.

The landlord also complained that the tenant has stored material in the hallway outside his rental unit and brings material into the rental property that cannot be stored in his rental unit. She said that she has received many oral complaints from other tenants in the building about this tenant. She claimed that the landlord has lost tenants because existing tenants find the tenant's actions objectionable and disturbing.

The landlord's witness testified that he has watched the tenant allow many people to access the rental property by opening the rear fire escape door which is not supposed to be used to enter the property. He said that the tenant plays loud music at late hours of the night and uses woodworking equipment outside during the evening. He claimed that the tenant keeps people awake at night. This witness confirmed the landlord's account of the visitor allowed access to the building outlined above. The witness said that he finds the tenant threatening. He said that on one occasion he felt compelled to arm himself with a baseball bat before he spoke to the tenant about a matter in dispute.

The tenant testified that the landlord's assertions and those of the landlord's witness were without substance. He maintained that the landlord's objections are to his willingness to protect his rights as a tenant and his persistence in enforcing those rights. He disagreed with much of what the landlord said and claimed that the landlord's assertions were unfounded. He said that many of these issues were addressed in his written evidence, which did in fact address a number of the concerns raised by the landlord at the hearing.

### Analysis

When a landlord issues a 1 Month Notice and the tenant disputes the Notice the onus is on the landlord to prove cause for issuing the 1 Month Notice. While the landlord testified that she has received many complaints about the tenant's conduct and that of his guests, she did not enter any written evidence regarding these complaints. She did not provide any letters of complaint from tenants, nor any details regarding her claim that she has lost tenants as a result of the tenant's actions. Her only witness was another tenant who would appear to have such a poor relationship with the tenant that he chose to speak with the tenant while holding a baseball bat on one occasion. From this testimony, it is unclear to me whether it was the tenant or the witness who were responsible for behaviors that may have been considered threatening or intimidating to the other party.

Overall I find there was insufficient evidence from the landlord to allow me to find that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. Many of the examples cited by the landlord during her oral testimony appeared to reflect her disagreement with the methods used by the tenant to protect what he considered to be his legitimate rights as a tenant. The landlord cannot obtain an end to this tenancy for cause because the tenant has chosen to call the City of Vancouver or the Fire Department to pursue issues of concern to him in the rental property. I find in general that many of the examples cited by the landlord in her oral testimony were directed at the landlord's dissatisfaction with the tenant's attempts to alert other tenants to the landlord's practices in conducting the landlord's business. While the landlord may find the tenant's posting of notes and comments in public areas objectionable and interactions with the tenant stressful, I find that the landlord has failed to meet the burden of proof required to demonstrate that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. For these reasons, I allow the tenant's application to cancel the landlord's 1 Month Notice.

During the hearing, the landlord testified that only one tenant has been allowed to access or exit the rental building using the rear fire door due to his special circumstances. As use of this rear fire door was a recurring issue in dispute during this

hearing, I advised the tenant that if I were to allow his application to cancel the landlord's 1 Month Notice, I would require him to abide by the landlord's requirement that the tenant not allow people to enter the rental building by way of the rear fire door. The tenant agreed to do so and also agreed that he and his visitors would only access the rental building by the front door. He also agreed to only allow tenants into the building and not visitors of other tenants.

In the interests of giving this tenancy an opportunity to continue on a more positive basis, I order the tenant to discontinue use of the rear fire door either to allow others to access the rental property or to enter or exit the rental property himself. I order that the only time the tenant is allowed to use the rear fire door is in response to an actual emergency requiring use of that fire door to exit the building.

#### Conclusion

The tenant's application is allowed. The 1 Month Notice is set aside with the effect that this tenancy shall continue.

I issue an order to the tenant to discontinue use of the rear fire door either to allow others to access the rental property or to enter or exit the rental property himself. I order that the only time the tenant is allowed to use the rear fire door is in response to an actual emergency requiring use of that fire door to exit the building.

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*.