

DECISION

Dispute Codes: CNC

Introduction

This Hearing was scheduled to hear the Tenants' application to cancel a *One Month Notice to End Tenancy for Cause* (the "Notice") issued July 28, 2011.

Both parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the female Landlord with the Notice of Hearing documents on August 10, 2011. The Landlords acknowledged receiving copies of the Tenant's documentary evidence on August 30, 2011 at 4:30 p.m.

I accept the Landlords' undisputed testimony that they provided the Tenants with the Landlords' documentary evidence on August 22, 2011.

Preliminary Matter

The female Landlord testified that she served the Notice on the Tenant PT at the rental unit with a police officer present at 1:30 a.m. on July 28, 2011. The Tenant PT testified that she was not served with the Notice by a police officer. She stated that she found the notice on her table in the morning.

Both parties provided a copy of the Notice in evidence. The Landlords' copy is signed by a constable, including his police number. The Tenant has filed to cancel the Notice. Therefore, pursuant to the provisions of Section 71(2)(b) of the Act, I am satisfied that the Notice was sufficiently served on July 28, 2011.

Background and Evidence

The Landlord gave the following affirmed testimony:

- This tenancy began on June 1, 2011.
- The female Landlord testified that on June 8, 2011, at 11:30 p.m., the occupant who lives below the Tenant called the female Landlord to complain about noises coming from the Tenants' suite. The occupant stated that this had been going on for about a week, at times until 1:30 – 2:00 a.m. The female Landlord testified that she spoke to the Tenant about this the next day and warned her about disturbing others.
- The female Landlord testified that on June 10, 2011, at 12:30 a.m., another occupant called to complain about loud yelling and screaming. The male Landlord investigated and found the Tenant and another occupant having a loud

argument. The Landlords provided warning letters to both the Tenant and the other occupant on June 11, 2011, a copy of which was provided in evidence.

- The female Landlord testified that there was a flood in the Tenants' suite on June 27, 2011, at 3:00 a.m., which caused damage to the two rental units immediately below her. The damages total \$1,800.00. The female Landlord testified that the Landlords went to the rental unit to investigate and that the Tenant PT answered the door intoxicated. There were blankets on the floor and in the bathtub. The Tenant told her the flooding was caused because she could not unplug the bath, but the female Landlord believes the flood occurred in the kitchen because of the damage to the kitchen countertops and the floors. Furthermore, there was no water in the bath tub. Photographs of the rental unit and the ceilings of the two suites below were provided in evidence. The female Landlord testified that the Tenant PT was provided with a letter indicting that she would be billed for the damage and the Tenant replied that she had no insurance.
- The female Landlord testified that the Tenant is often intoxicated and that her behavior while drunk disturbs other occupants in the building. She stated that she called the police after another noise disturbance caused by the Tenant on July 28, 2011, and that is why the police were there to give the Tenant the Notice.
- The female Landlord asked for an Order of Possession.

The Tenant PT gave the following affirmed testimony:

- The Tenant stated that the flood did not occur at 3:00 in the morning. She said it occurred at 7:00 in the morning, when she was washing clothes in the kitchen sink. She stated that the water overflowed, but she mopped it up with towels.
- The Tenant said she was sorry for the past disturbances, but that she had been off her medication. She stated that she was taking her medication now and was feeling much better. She stated that there have been no complaints since July 28, 2011.

Analysis

The Landlords seek to end the tenancy because the Tenant PT 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; and put the Landlord's property at significant risk.

The Tenant does not deny causing disturbances in the early hours of the morning on several occasions, even after written warning that it would not be tolerated. I find that the Tenant has significantly interfered with other occupants or the Landlord on several occasions and that the Landlord's Notice is a valid notice. The Landlords have a responsibility to the other occupants under Section 28 of the Act to provide them with

freedom from unreasonable disturbance. I dismiss the Tenants' application to cancel the Notice to End Tenancy.

Section 55(1) of the Act states:

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.

Based on the testimony of the parties, I am satisfied that the Tenant received the 1 Month Notice to End Tenancy on July 28, 2011. I find that the effective date of the end of the tenancy was August 31, 2011 and that therefore the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant.

When I explained this to the Tenant PT, she stated that she couldn't possibly be out of the rental unit so quickly. The female Landlord stated that she had an uncashed cheque from the Ministry for the Tenants' September rent and that she would cash the cheque for "use and occupancy only", and requested an Order of Possession for 1:00 p.m., September 30, 2011. Further to the provisions of Section 55(1) of the Act, I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., September 30, 2011.**

Conclusion

The Tenants' application is dismissed without leave to re-apply.

I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., September 30, 2011.** This Order must be served on the Tenant and 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*.

Dated: September 08, 2011.

Residential Tenancy Branch