



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause. The tenant and an agent for the landlord participated in the teleconference hearing.

Preliminary Issues – Service of the Notice and the Landlord's Evidence

The tenant stated that he only received the first page of the notice to end tenancy. The landlord's testimony was that she personally served the tenant with both pages of the notice to end tenancy on August 31, 2011. The tenant did not submit a copy either page of the notice to end tenancy with his application. The landlord submitted in their evidence a copy of both pages of the notice to end tenancy. I asked the tenant in the hearing if he had his copy of the notice to end tenancy that was served on him on August 31, 2011, but he did not have it. I found that the landlord did serve the tenant with both pages of the notice to end tenancy on August 31, 2011.

The landlord submitted 16 pages of documentary evidence. The landlord testified that she personally served the tenant with the landlord's evidence on September 26, 2011. The tenant at first stated that he did not receive any of the landlord's evidence. He then stated that he had received some, but not all, of the evidence. The tenant's testimony changed several times regarding which pages of the evidence he had or had not received. I found the landlord's testimony on this point more consistent and credible than that of the tenant, and I found that the tenant had been served with all of the landlord's evidence. I admitted the landlord's documentary evidence.

Only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began on September 1, 2010.

On March 22, 2011, a hearing was convened pursuant to the tenant's application to cancel a notice to end tenancy for cause. The landlord and the tenant both participated in the teleconference hearing, and the landlord gave testimony that one reason they sought to end the tenancy was that there were numerous complaints from other occupants regarding noise coming from the tenant's unit, particularly significant and continual noise at night. The tenant's response had been that while he did have late night guests, they did not cause noise. The result of that hearing was that the landlord did not provide sufficient evidence to end the tenancy, and the notice to end tenancy was cancelled.

On August 31, 2011 the landlord served the tenant with a new notice to end tenancy for cause. The notice indicated several reasons for ending the tenancy, one of which was that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant. The landlord's evidence on this point was that they have received further verbal and written complaints about constant noise caused by the tenant and his guests, who come and go at all hours. Included in the landlord's documentary evidence was a written noise complaint dated August 31, 2011.

The tenant's response to the alleged noise complaints was that he is allowed to have friends over and he does, but they are not noisy. The tenant and his guests keep to themselves. The music is coming from the apartment below, not from him.

The landlord orally requested an order of possession in the hearing.

Analysis

I find that the notice to end tenancy is valid, on the basis that the tenant and the tenants' guests unreasonably disturbed other occupants. The landlord provided evidence including a recent written complaint to show that the tenant and his guests were unreasonably disturbing other occupants at all hours. The tenant acknowledged that he has frequent guests, including some guests at night. I found the landlord's evidence to be more consistent and credible than that of the tenant. In the hearing on March 22,

2011 the tenant had been made aware of the landlord's serious concerns about excessive noise, yet the tenant continued to make excessive noise and disturb other occupants.

As the notice to end tenancy is valid and the landlord orally requested an order of possession in the hearing, I must grant an order of possession.

Conclusion

The tenant's application is dismissed.

I grant the landlord an order of possession effective two days from service. 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.

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: October 7, 2011.

Residential Tenancy Branch