

## **DECISION**

Dispute Codes      MNDC, LAT, CNC, FF

### Introduction

There are two applications filed by the Tenant against this Landlord. The Tenant's first application seeks a monetary order for compensation for loss of quiet enjoyment under the Act, authorization to a Tenant to change the locks to the rental unit and seeks recovery of the filing fee. The Tenant's second application seeks to cancel a notice to end tenancy for cause and a monetary order request for loss of quiet enjoyment.

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

At the beginning of the hearing the Tenant states that she has not received any evidence filed by the Landlord in response to her claims. The Landlord has provided a proof of service receipt from Canada Post with the tracking number attached stating that the Landlord's evidence package was sent on October 31, 2011 and that nothing has been returned. I find that with no other evidence before me concerning the delivery of the Landlord's evidence that the Tenant is deemed to have received the Landlord's evidence 5 days after it was sent by registered mail via Canada Post. Efforts will be made to read and describe in detail the Landlord's evidence to the Tenant during the hearing.

It was also clarified with the Tenant that the second monetary order request was being withdrawn by the Tenant to satisfy the Residential Tenancy Act's limitation for an upper limit claim of \$25,000.00 in a monetary request.

The Landlord has filed a written submission for an order of possession.

### Issue(s) to be Decided

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

Is the Landlord entitled to an order of possession?

Is the Tenant entitled to an order authorizing the Tenant to change the locks to the rental unit and withhold a key from the Landlord?

Is the Tenant entitled to a monetary order for loss of quiet enjoyment?

## Background and Evidence

This Tenancy began on June 1, 2011 on a fixed term tenancy for 1 year until May 31, 2012 as shown in the submitted copy of the signed tenancy agreement. The monthly rent is \$700.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$350.00 was paid on June 1, 2011.

Both parties have attended the hearing and have made detailed reference to the evidence submitted except for the Landlord's evidence which has been decided upon above.

Both parties acknowledged that the Tenant was served with a 1 month notice to end tenancy for cause on October 20, 2011 with an effective date of November 30, 2011. The notice cites the reason for cause as, "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord." The Landlord refers to a decision made September 22, 2011 on Residential Tenancy Branchy File No. 778949. The Landlord refers to a paragraph in the analysis section which states, "The tenant understand that while the landlord's notice to end tenancy for cause has been set aside, that if the tenant's behaviour creates problems on the property in the future, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer for consideration." The Landlord cites a letter dated October 20, 2011 to the manager from a next door tenant (#128) which states, "My children are afraid of her and they cannot come outside on balcony or walk in hallway. She is always staring at them, say "GO AWAY GO AWAY" and shouting at them. When my family walk in the hallway, she bangs the apartment door. So my children have to hide from her. My mother now have to walk with them always. We have so many problems with this women, something is wrong." The Tenant disputes this claim stating that many of these issues pre-date the September 22, 2011 hearing. The Landlord states that this was the Tenant in #128's notice to vacate because of ongoing issues with this Tenant. The Landlord states that many of the issues pre-date the September 22, 2011 hearing, but is unable to provide any details of this letter that would be subsequent to the September 22, 2011 hearing. The Landlord also refers to a letter dated October 6, 2011 from the Surrey By-law enforcement office of loud noise complaints. The Landlord also refers to a letter dated October 6, 2011 to the Tenant/Occupant of the loud noises. The Landlord states that an investigation was made into the complaints of noise from #229, where the Tenants from the neighboring units and the neighbours of the complainant stated that no excessive noise exists. The Landlord has also referred to a letter dated October 17, 2011 which states that the noise from unit 229 is continuing. The Landlord states that they have done everything they can to ascertain the noise complaints, but have been unable to confirm them. The Landlord has also received complaints from unit 229 over

the numerous noise complaints that they are responding to made by this Tenant. The Tenant is unable to provide any sort of supporting evidence of noise. I note that the Tenant has also submitted in evidence letters of complaint to the property manager, A.L. dated October 3<sup>rd</sup> and 9<sup>th</sup>, 2011 by facsimile of noise complaints from unit 229 and written logs of complaints October 4<sup>th</sup> and 6<sup>th</sup>, 2011 to the property manager, A.L. and October 5<sup>th</sup> and 9<sup>th</sup> of 2011 to the Surrey By-law office. The Landlord states that the complaints made to the by-law office have been resolved with no credit given to the Tenant's noise complaints.

The Tenant also seeks to have authorization given to the Tenant to change the locks to the rental unit and to withhold providing a key to the Landlord. The Tenant states in their written submissions that the Landlord is entering the unit without notice or permission. The Landlord disputes this stating that the Tenant has failed to provide any details of these instances. The Tenant has not provided any supporting evidence that the Landlord is entering the rental unit without notice or permission.

The Tenant is seeking a monetary order request for \$25,000.00 for loss of quiet enjoyment. The Tenant cites numerous noise disturbances over the period of June 2, to November 11 of 2011. The Landlord disputes these as the Landlord upon investigation after giving notices of warning to unit 229 has been unable to determine any excessive noises. The Landlord has provided letters from the neighbouring rental units of the complainant and the source units, which states that none of the neighbours have heard any excessive noises. The Tenant states that the \$25,000.00 in compensation is based on her loss of quiet enjoyment of the rental unit and her numerous letters of complaint for excessive noise. The Tenant is unable to establish or quantify how she came to the monetary request, but only states that the amount is what she is entitled to.

### Analysis

As both parties have attended the hearing and the Landlord has confirmed receipt of the two notice of hearing applications filed by the Tenant, I am satisfied that the Landlord has properly been served. I also find that the Landlord has been properly served with the Tenant's evidence as they have made detailed reference to the Tenant's submitted documents. As deemed above, although the Tenant states that she has not received the Landlord's evidence, I find based upon the Canada Post Registered Mail Receipts dated October 31, 2011 that was submitted by the Landlord, that the Tenant is deemed served 5 days later.

I find based upon the submitted evidence and testimony of both parties that the Landlord has established their claim for cause in ending this tenancy. Through the

evidence of complaints filed by two separate Tenants in the building and the investigation by the city by-law enforcement office, I find on a balance of probabilities that the Tenant has failed to establish their claim in setting aside the notice. The Landlord has shown an ongoing form of unreasonable disturbance of another occupant or the landlord of the building by the Tenant and I find that Tenant's application to cancel the notice dated October 20, 2011 is dismissed. The notice dated October 20, 2011 is upheld. The Landlord has made written submissions for an order of possession and I grant the Landlord an order of possession for the effective date of the notice which is November 30, 2011.

I also find through a lack of evidence that the Tenant has failed to establish a claim for an authorization to changing the locks and to with hold a copy of the key from the Landlord. This portion of the Tenant's claim is dismissed.

The Tenant's claim for monetary compensation for loss of quiet enjoyment has not been established. Further, I find that the Tenant has failed to show any loss or establish any sort of quantitative claim for the \$25,000.00 and I also find through the Tenant's own direct testimony find that this is an arbitrary amount being sought. The Tenant's claim for a monetary order is dismissed.

### Conclusion

The Tenant's application to cancel the notice to end tenancy dated October 20, 2011 is dismissed.

The Landlord is granted an order of possession.

The Tenant's application for authorization to change the locks and with hold a key from the Landlord is dismissed.

The Tenant's application for a monetary order is dismissed.

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: November 15, 2011.

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Residential Tenancy Branch