

DECISION

Dispute Codes CNC and FF

Introduction

This hearing was convened on the tenants' application to have set aside a Notice to End Tenancy for cause posted on December 2012 and setting an end of tenancy date of March 1, 2012. The tenants also sought to recover the filing fee for this proceeding.

As a preliminary matter, the landlords noted that the style of cause had named them individually as landlords whereas the rental agreement and the Notice to End Tenancy were both issued in the name of the corporate landlord. Therefore, I have amended the style of cause accordingly.

Issue(s) to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be set aside or upheld.

Background and Evidence

This tenancy began on May 1, 2009 under a written rental agreement which set rent at \$895 per month and recorded a security deposit of \$450 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served for disturbance of other occupants or the landlord after some conflict between the applicant tenants and the present and former tenants of the rental unit above them.

The present conflict appears to be associated with incompatible lifestyles, the upper tenants having two children while the working hours of the downstairs tenants creates a preferred sleeping time between 2 a.m. and 11 a.m.

The landlord stated that, as a result, the upstairs tenants had advised him that the applicant male tenant had met them on the first day of their tenancy, advised of their eccentric hours, and was insistent that the landlords house the children in a 10 x 10 ft. room which they found to be untenable.

The upper tenants said they had made great effort not to disturb the lower tenants, but despite their efforts, they were subject to constant complaining, escalating to banging on the ceiling which woke the children, couched threats, and claims that disturbances were a detriment to their health. The landlord stated that he believed the claims of the upstairs tenants that the male tenant had threatened to awaken the children with banging on the ceiling and other such comment.

In a Christmas period incident, the upstairs tenants' daughter was singing for guests when the downstairs tenants banged on their window with what was thought to be a wet mop. The landlord stated that he had no reason to doubt the claims of the upper tenants that they felt they had to creep about their home for fear of invoking the wrath of the lower tenants.

The landlord stated that he had had similar complaints from other upstairs tenants, and had spent approximately \$1,500 in an effort to dampen sound between the rental units.

Two witnesses, friends of the lower tenants, both attested to their good character and the fact that during visits, that had heard some sound intrusion from the upper unit into the lower.

The landlord stated that he had further concerns about the applicant tenants' attempt to dictate terms to him such as giving them exclusive use of a back door which has traditionally been used as a common entrance.

He stated that, in one former tenancy, he had attempted a joint resolution meeting the upper and lower tenants, but that had been thwarted by an aggressive outburst from the male applicant tenant.

By written submission and orally at the hearing, the applicant tenants stated that it was now their preference to relocate and that they were actively seeking new accommodation, but wished to do so when they have been able to find a suitable new home.

Analysis

Section 47(1)(i) of the *Act* provides that a landlord may issue a notice to end tenancy for cause in circumstances, among others, in which tenants have unreasonably disturbed another occupant or the landlord.

I find that the applicant tenants have done so and that the notice to end tenancy was lawful and valid. Therefore, I declined to set it aside.

On hearing that determination, the landlord requested an Order of Possession in support of the notice, issuance of which is made mandatory under the circumstances by section 51(1) of the *Act*. The order is issued herewith.

Conclusion

The Notice to End Tenancy of December 27, 2011 is upheld. The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on March 1, 2012.

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: January 17, 2012.

Residential Tenancy Branch