

## **DECISION**

Dispute Codes      CNC, FF

### **Introduction**

This is an application filed by the Tenant to cancel a notice to end tenancy for cause and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have acknowledged receiving the evidence submitted by the other party, I am satisfied that each has been properly served with the Notice of hearing and evidence packages submitted under the Act.

At the beginning of the hearing the Landlord's Agent stated that she is seeking an order of possession for the Tenant to vacate the rental unit.

### **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?

### **Background and Evidence**

Both parties agree that this Tenancy began in 2010 and that there is no signed tenancy agreement. The Landlord states that a 1 month notice to end tenancy for cause dated March 30, 2012 was personally served on the Tenant on the same day. The Tenant confirms receipt of the notice and had filed an application to cancel the notice on April 5, 2012. The effective date of the notice is May 1, 2012.

The Landlord has provided 3 reasons for cause listed on the notice. The first reason is the Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The second reason is the Tenant has assigned or sublet the rental unit/site without the landlord's written consent. The third reason is Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement. The Tenant disputes the notice by stating the reasons are not valid.

The Landlord has presented 4 witnesses, who are also Tenants in other rental units on the property. The Landlord's Agent, J.M. provided testimony that she received calls from various Tenants, on March 26, 2012 on noise complaints of loud music coming from the Tenant's unit. The Landlord's Agent responded to the Tenants that as she lives directly next to the Tenant that the music was quite strong coming through the shared wall. The Landlord's Agent stated that she gave verbal notice to the Tenant to turn down the music. The Tenant disputes the Landlord's claims. The Landlord's first witness, E.P. gave testimony that she contacted the Landlord's Agent for a noise complaint of loud music coming from the Tenant's rental unit. The Tenant has a witness, A.M. who states that he was in attendance on that day until about noon and that there was no excessive music from the rental property. The Landlord has also provided the witness, P.P. who is another Tenant who gave testimony that she called in a noise complaint to the Landlord's Agent of excessive music coming from the Tenant's unit. The Tenant's witness, A.M. also disputes this stating that he was home all day and that there was not excessive music. The Landlord's third witness, A.S. states in his testimony that he works nights and that on the two dates mentioned by the other witnesses that he also complained to the Landlord's Agent of excessive noise during the day on those occasions that prevented him from sleeping. The Landlord's fourth witness, R.W. (who is also J.M.'s boyfriend) confirms in his testimony the 2 dates where there was music of excessive levels coming from the Tenant's rental. The witness, R.W. states that he works from home in an office inside J.M.'s home daily. The Tenant disputes the Landlord's claims and the testimony provided by the witnesses.

The Tenant states in his testimony that he had a verbal agreement with the previous property manager where he was the Tenant and that he would be able to re-rent portions of his space to other occupants. The Landlord disputes that such an agreement exists. The Tenant also stated that in the same agreement that no security deposit was required. The Landlord disputes this stating that he has asked verbally on numerous occasions since the beginning of the Tenancy in 2010 that the Tenant was provided with a Tenancy Agreement but has refused to complete and sign the agreement and return it to the Landlord. The Landlord states that out of a total of 8 rental units that this is the only one without a tenancy agreement or a security deposit being paid. The Tenant disputes this stating that his tenancy agreement was verbal and that a tenancy agreement in writing was not required by the previous property manager.

### Analysis

In a hearing the onus or burden of proof is on the party making the claim, in this case both parties are responsible as the Tenant has made an application to cancel the notice

to end tenancy and the Landlord has given reasons for cause to end the tenancy. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. For the first reason stated in the Landlord's notice the Landlord relies on the direct testimony of 4 other Tenants at the rental property. The Tenant has disputed this testimony and has provided 1 witness who is also an occupant/roommate in his rental unit. The Landlord claims that all of their notices to the Tenant were done verbally in an atmosphere of trying to resolve their differences amicably. As there is a lack of documentary evidence this comes to the credibility of the direct testimony provided by both parties. I find on a balance of probabilities that the 4 Tenant/Witnesses for the Landlord offer more to support the claims for the Landlord's reasons for cause over those of the Tenant's 1 witness. On this basis, I am satisfied that that the Landlord has established his reasons for cause and uphold the 1 month notice to end tenancy for cause dated March 30, 2012. The Tenant's application to cancel the notice to end tenancy is dismissed. The Landlord is granted an order of possession for the effective date of the notice on May 1, 2012.

### Conclusion

The Tenant's application is dismissed without leave to reapply.  
The Landlord is granted an order of possession.

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: April 25, 2012.

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Residential Tenancy Branch