



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Landlord's application: OPC; MNR; MNDC; MNSD; FF

Tenant's application: MT; AAT; OPT; CNC; O; FF

### **Introduction**

This Hearing was convened to consider cross applications. The Landlords seek an Order of Possession; a Monetary Order for unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit and pet damage deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

The Tenants seeks more time to make their application to cancel a Notice to End Tenancy for Cause (the "Notice"); to cancel the Notice; for an Order that the Landlord allow access to or from the unit for the Tenants or the Tenants' guests; an Order of Possession; and to recover the cost of the filing fee from the Landlords.

The Landlords and the Tenant gave affirmed testimony at the Hearing.

### **Preliminary Matters**

The Tenants have applied for an extension of time to make their application to cancel the Notice. The Notice was posted on their door on April 16, 2012. Service in this manner is deemed to be effective 3 days after posting the documents. Section 47(4) of the Act requires a tenant to file an application to cancel a notice to end tenancy for cause within 10 days of receipt of the notice. In this case, the Notice was deemed to have been served on April 19, 2012. The Tenants filed their Application for Dispute Resolution on April 25, 2012, and therefore they filed within the 10 days allowed under Section 47(4) of the Act. The Tenants' application for an extension of time is not required, and this portion of their application is dismissed.

The Landlords have applied for compensation for damage or loss under the Act, regulation or tenancy agreement, but did not identify what the compensation was for or whether it was sought under the Act, regulation or tenancy agreement. The Landlords' application was filed on May 2, 2012 and identifies that they seek a Monetary Order in the amount of \$1,900.00 only, which is the amount of rent for the month of May, 2012. Therefore this portion of their application is dismissed.

### **Issues to be Decided**

- Should the Notice issued April 15, 2012, be upheld or cancelled?
- Is either party entitled to an Order of Possession of the rental unit?
- Should the Landlords be ordered to provide access to the rental unit to the Tenants?
- Are the Landlords entitled to a monetary award for unpaid rent for May, 2012?
- May the Landlords apply the security deposit and pet damage deposit towards a monetary award for unpaid rent?

### **Background and Evidence**

The rental unit is one of four units in the rental property. Two of the units are commercially rented and two are residential units. This tenancy began on January 15, 2011. Monthly rent for the rental unit is \$1,900.00, due the first day of each month. The Tenants paid a security deposit in the amount of \$850.00 and a pet damage deposit in the amount of \$200.00 at the beginning of the tenancy.

#### **The Landlords and their witnesses gave the following testimony:**

The Landlords testified that on April 25, 2012, the Tenants put a “stop payment” on May’s rent cheque. The Landlords seek a Monetary Order in the amount of \$1,900.00 for May’s rent.

The Landlords testified that the Tenants have been unreasonably disturbing the other residential tenants (JS and DS) in the rental property by playing loud music, slamming doors and doing laundry late at night.

The Landlords’ witness, JS and DS, testified that they are the other residential occupants in the rental property and that they tried to come to an agreement with the Tenants about the disturbances, but were unsuccessful. JS and DS testified that they moved into the rental property after the Tenants did and that initially everything was fine until the male Tenant bought a boom box about 5 months after JS and DS moved in. The witnesses stated that they showed the male Tenant how noisy it was in their suite, but he kept playing loud music late at night and early in the morning. The witnesses testified that the police have been called on March 9<sup>th</sup> and twice on April 18<sup>th</sup> because of the noise.

The witnesses stated that the Tenants do their laundry at 3:00 in the morning, which disturbs their sleep and that the Tenants bang doors, and go up and down the stairs with heavy steps all through the night. The witnesses testified that they could not stand it any longer and have been living elsewhere since April 23, 2012. They stated that they hope to move back home when the Tenants are gone.

The Landlords testified that the male Tenant smokes in the rental unit, which is a breach of a term of the tenancy agreement. They testified that they gave him written warning that smoking in the rental unit was not allowed, but he still smokes. The Landlords provided a copy of the warning letter in evidence.

The Landlords testified that the Tenants park their vehicle in areas that are reserved for the commercial tenants and that the commercial tenants have complained. They stated that one of the commercial tenants has also complained about the loud music.

The Landlords also provided a copy of the Notice and a copy of the tenancy agreement in evidence.

The Tenant gave the following testimony:

The Tenant testified that he has May rent for the Landlords, but the Landlords refuse to accept it.

The Tenant stated that he bought his sub woofer after JS and DS bought theirs and that he returned it shortly after JS and DS complained about the noise.

He testified that the Landlords told him he could do laundry until 11:00 at night and denied doing laundry at 3:00 in the morning. He stated that the washer and dryer were really old and rickety and that they had recently been replaced so they were much quieter now.

The Tenant denied ever smoking in the rental unit. He stated that he smokes on the patio, which is allowed under the tenancy agreement.

The Tenant stated that the Landlords' son has sold his house and that the Landlords were trying to get rid of the Tenants so he can move into the rental unit. He stated that the male Landlord told him that he was going to "flip a coin" to see which tenant he was going to evict. He stated that he had proof that the Landlord had done so.

The Tenant testified that the back gate to the rental property is metal and makes a very loud noise when it shuts. He denied deliberately slamming the gate.

The Tenant stated that he has a really good relationship with the commercial tenants and that they have never complained to him about parking or noise.

The Tenant testified that he and the Landlords entered into a new tenancy agreement a couple of months ago. He stated that the tenancy agreement provided by the Landlords was the original agreement and that the parties had just changed the year on the agreement, and initialed the change.

The Tenants did not provide any documentary evidence.

The Landlords gave the following reply:

The Landlords denied that their son was going to move into the rental unit. They also denied that they had told the Tenant they were going to flip a coin to see who would be evicted.

### **Analysis**

When a landlord seeks to end a tenancy for cause, the onus is on the landlord to prove, on the balance of probabilities, that the tenancy should end for the reasons provided on the notice to end tenancy. In this case, the Landlords seek to end the tenancy because:

- The Tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- Have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

With respect to the second reason, the Landlords provided a copy of the warning letter about smoking in evidence. It is dated April 7, 2011. I do not find that this is sufficient reason to end the tenancy as the Landlords did not act on the warning letter until almost a full year later. In addition, the parties entered into a new tenancy agreement a couple of months ago.

I have carefully considered the parties' affirmed testimony and the documentary evidence provided by the Landlords. I find on the balance of probabilities that the Tenants have unreasonably disturbed JS and DS. When I asked the Tenant if he would consider doing laundry before 9:00 p.m. at night, he declined and responded that he didn't think he should do JS and DS any favours. JS and DS have temporarily moved out of their home to get away from the late night noise. The Tenant did not deny that the police have been called on three occasions because of noise complaints. Therefore I dismiss the Tenants' application to cancel the Notice. I find that the end of

tenancy date is May 31, 2012, and provide the Landlords an Order of Possession for that date.

The tenancy is ending and therefore the remainder of the Tenants' application is also dismissed.

The Landlords seek a monetary award for unpaid rent for May, 2012, but did not deny that they have refused to accept the rent from the Tenants. I directed the Tenant to pay May rent and the Landlords to accept it.

The Landlords have been successful in their application for an Order of Possession and I find that they are entitled to recover the cost of the \$50.00 filing fee from the Tenants. Pursuant to the provisions of the Act, the Landlords may deduct \$50.00 from the security deposit. The remainder of the security deposit and the pet damage deposit must be applied in accordance with the provisions of the Act.

### **Conclusion**

The Tenants' application is dismissed in its entirety.

I hereby provide the Landlords an Order of Possession **effective 1:00 p.m., May 31, 2012**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlords may apply **\$50.00** from the security deposit to recover the cost of the filing fee.

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: May 14, 2012.

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Residential Tenancy Branch