

DECISION

Dispute Codes CNC, FF

Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy issued for cause and the 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 confirmed receipt of the notice of hearing and submitted evidence, I am satisfied that both parties have been properly served.

The Landlord has orally requested an end to the tenancy by obtaining an order of possession.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Background and Evidence

This Tenancy began on May 1, 2012 on a fixed term tenancy ending on April 30, 2012 as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$1,990.00 payable on the 1st of each month and a security deposit of \$995.00 was paid.

The Tenant seeks an order to cancel a notice to end tenancy issued for cause. Neither party submitted a copy of the notice to end tenancy dated September 16, 2012. Both parties agreed that the Landlord served a 1 month notice to end tenancy issued for cause dated September 16, 2012 on the same date in person. The stated effective date of the notice was October 16, 2012. Both parties agreed that there were 4 reasons for cause selected.

Tenant or a person permitted on the property by the Tenant has

- 1) Significantly interfered with or unreasonably disturbed another occupant or the landlord.
- 2) Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- 3) Put the Landlord's property at significant risk.

Tenant has engaged in illegal activity that has, or is likely to adversely effect the quiet enjoyment, security, safety or physical well being of another occupant or the Landlord.

Under reason #1, the Landlord states that the Tenants have been routinely noisy causing complaints made by the two other basement Tenants. The Tenants dispute this stating that the noises reported are normal household noises and that there have never been more than 5-8 persons at a time in the rental. The Tenants state that they have a good relationship with the two downstairs Tenants. The property is described as multi leveled, in which the Landlord's reside in the upper unit, the Tenants on the main floor and two other Tenants living below the main floor(basement). The Landlord states the noise levels are unreasonable high and that the Tenants were verbally requested to keep the noise down. The Landlord states that the Tenants have parties causing excessive noise and that there have been complaints about stomping the floors. The Landlord has submitted two letters from the two basement Tenants. The letters state, "they have been consistently causing a disruptive amount of noise. They seem to bring friends into their rental unit often, at least every week, and when they do have company over the amount of noise is extremely bothersome." The other letter states, "we heard loud noises coming from the upper suite which we believe was a party of sorts. The noises did not cease until well past midnight." The Tenant disputes this stating that they regularly have company over on the weekends for dinner and that the noise is not excessive.

Under reason #2, 3, and 4, the Landlord states that the Tenants had persons over who have excessive amounts of luggage who were given a key to the rental unit. The Landlord states she was never provided notice of these persons and that they were causing her to feel anxiety whenever she saw them in the yard. The Landlord also states that the Tenant's friends parked in the public alleyway which is illegal.

Analysis

I accept the mutually agreed comments of both parties that the 1 month notice to end tenancy issued for cause was personally served on September 16, 2012. Both parties were informed that as the rent is due on the 1st of each month that the 1 month notice must have 1 clear month to be effective. As such, both parties were informed that the Act allows for the automatic correction of the effective date of the notice from October 16, 2012 to October 31, 2012.

I find on a balance of probabilities that I prefer the evidence of the Landlord over that of the Tenant. Based upon the direct testimony of both parties and the two letters from the

two basement Tenants, I find that the Landlord has established a reason for cause for unreasonably disturbing another occupant or the Landlord. The Landlord having made an oral request at the hearing in compliance with the Act is entitled to an order of possession.

On the remaining reasons for cause, I find that the Landlord has failed to provide sufficient evidence to satisfy me that the health or safety of an occupant or the Landlord or the Landlord's property was put at significant risk. The Landlord has also failed to provide sufficient evidence that the Tenant has engaged in any illegal activity. On these reasons for cause, the Landlord's application is dismissed.

The Landlord is granted an order of possession. The Tenants must be served with the order of possession. Should the Tenants 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.

Conclusion

The Tenant's application is dismissed.
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: October 30, 2012.

Residential Tenancy Branch