

## **DECISION**

Dispute Codes: CNC OLC FF

### Introduction

The tenant applied under the *Residential Tenancy Act* (the “Act”) to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”), and to seek an order requiring the landlord to comply with the Act, regulation or tenancy agreement, and to recover the filing fee.

The tenant, an agent for the landlord (the “agent”) and three witnesses for the landlord attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me.

The parties confirmed that they received the evidence package from the other party and had the opportunity to review the evidence prior to the hearing. I have considered all of the relevant evidence that was submitted in accordance with the rules of procedure, and testimony provided.

### Preliminary and Procedural Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated more than one matter of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice to End Tenancy and the tenant’s application to recover the filing fee at this proceeding. The balance of the tenant’s applications is dismissed with leave to reapply.

### Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

### Background and Evidence

A month to month tenancy agreement began on June 1, 2008. Monthly rent in the amount of \$675.00 was due on the first day of each month and was increased over the course of the tenancy to the present amount of \$735.00 per month. A security deposit of \$337.50 was paid by the tenant at the start of the tenancy.

The rental building was built in 1928 and underwent a major renovation in 2008 consisting of newer beams to help reduce vibration in the building, and extra insulation was installed where possible to help reduce noise transfer. Neither party disputed the condition and renovated condition of the rental building.

Section 17 of the tenancy agreement states:

**“CONDUCT.** In order to promote the safety, welfare, enjoyment and comfort of other occupants and tenants of the residential property and the landlord, the tenant or the tenant’s guest must not disturb, harass, or annoy another occupant of the residential property, the landlord or a neighbour. In addition, noise or behaviour, which in the reasonable opinion of the landlord may disturb the comfort of any occupant of the residential property or other person, must not be made by the tenant or the tenant’s guest, nor must any noise be repeated or persisted after a request to discontinue such noise or behaviour has been made by the landlord. The tenant or the tenant’s guest must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant of the residential property or other person at any time, and in particular between the hours of 10:00 p.m. and 9:00 a.m....”

[reproduced as written]

The tenant confirmed that she was served on December 14, 2012 with a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) alleging that 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 tenant disputed the notice within 10 days of being served with the 1 Month Notice. The effective vacancy date on the 1 Month Notice is January 31, 2012, which corrects to January 31, 2013 under the *Act* as the 1 Month Notice was dated December 13, 2012.

The agent referred to a warning letter dated October 29, 2012 in which the tenant was warned regarding her breach of section 17 of the tenancy agreement. In that letter the agent writes that they have received a number of verbal and written complaints regarding the tenant’s behaviour, specifically her stomping and loud music that she is

playing both inside and outside of her unit. The tenant is advised that failure to correct this breach will result in further action being taken which will result in eviction. The tenant confirmed that she received that letter on October 29, 2012 and did not dispute the contents of that letter with the landlord.

The agent called witness DK, who is the downstairs neighbour of the tenant. Witness DK, confirmed that she wrote the email dated December 10, 2012 which was an email complaint from witness DK about the tenant, and was submitted in evidence. The witness testified under oath that she personally heard the tenant stomping upstairs above them for a "solid 10 days" which would start from the time they woke up to the time their children went to bed around 8:00 p.m. or 8:30 p.m. Witness DK stated that her mother-in-law was staying with them at the time and that her mother-in-law was shocked to hear the stomping throughout the day.

Witness DK stated that the tenant would yell at times and swore on two occasions saying "Fucking Jesus Christ". The witness also stated that the tenant would have her music blasting. The witness described that her children are aged three and seven and that for the first month after they moved in, her children had to sleep with earplugs in due to the noise from the tenant upstairs.

The witness testified that she does not allow her children to play in their bedrooms as their rooms are directly below the tenant so she has asked her children to play in the basement. The witness said that the tenant has had her music and TV turned up so loud between 8:30 p.m and 10:00 p.m., times when the children were sleeping, and that her children have been awoken and were crying due to the noise. In addition, during the first month of the tenancy, between 11:00 p.m. and midnight, the witness stated that the tenant made so much noise about once per week, that their family was awoken from their sleep.

The tenant decided to not cross-examine witness DK. The tenant stated after witness DK left the hearing, that the testimony of witness DK was false.

The landlord's second witness, NH, lives next door and owns the house next to the rental building. Witness NH stated that there were no issues with the tenant until the witness had a baby in 2011. From that point, witness NH stated that the tenant was upset at the noise due to the children in their yard. In late August or early September 2012, witness NH stated that the tenant blasted her radio so loud that she could not hear her husband talking in the backyard. As a result, witness NH knocked on the door of the tenant to ask her to turn down her music. The witness testified that the tenant said "no" and that she only turned down her music after she was advised that the

witness was trying to put her baby, who was seventeen months old at the time, down to sleep.

In October 2012, witness NH stated that they were outside having a barbeque with friends when the tenant played her music so loud that they had to move their guests inside due to the loud music which they found disturbing.

The tenant decided to not cross-examine witness NH. The tenant stated after witness NH left the hearing, that the testimony of witness NH was false.

The third witness for the landlord, witness KC, is the receptionist for the landlord. Witness KC said that originally when she met the tenant, she thought she was a sweet lady, however, her opinion changed when she received a call from the tenant demanding to speak to the agent for the landlord and ended up "swearing like a sailor."

The tenant disputed the testimony of witness KC, and asked witness KC to repeat what the tenant said on the phone. Witness KC stated that when the tenant was advised that the agent for the landlord was not available at the time, the tenant said "You get that Goddamned [name of agent] on the fucking phone." The tenant denied swearing or calling witness KC and said she was "shocked" at the testimony of witness KC.

The agent stated that the tenant informed him that he could not rent to a family with children which shocked the agent as he has never been told that by a tenant before. The tenant stated that she works with children and questioned the authenticity of the emails submitted by the landlord from the witnesses. I reminded the tenant that the witness confirmed writing the email during her testimony.

The tenant did not present any witnesses or witness statements to support that she did not significantly interfere with or unreasonably disturbed another occupant or the landlord. The tenant stated that she disputed the testimony of all of the witnesses during the hearing. The tenant first stated that she did not swear and later corrected herself that she did swear on one occasion in relation to the downstairs neighbour who she claims she was imitating at the time.

The agent made a verbal request for an order of possession during the hearing.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**1 Month Notice to End Tenancy for Cause** – The landlord provided three witnesses who testified under oath that the tenant has stomped, played her music loud and has sworn which has disturbed their children, and impacted them and/or their family. The landlord provided documentary evidence which the tenant confirmed that she received and did not dispute warning her on October 29, 2012 to not disturb other tenants or that she could face eviction.

I do not accept the testimony of the tenant for two reasons. The first reason is that the tenant, by her own testimony, contradicted herself during the hearing. The tenant first stated that she did not swear, and later corrected herself and stated and she swore on one occasion when she was imitating the downstairs neighbour. On the balance of probabilities, I accept the evidence of the two witnesses who testified that the tenant swore on multiple occasions.

Secondly, the tenant did not dispute the contents of the October 29, 2012 letter during the hearing. As a result, I accept that the contents of that letter and that the tenant was warned on October 29, 2012 that any future disturbances could result in her eviction and that the tenant has continued to create a disturbance for the tenants living downstairs since the warning letter issued on October 29, 2012.

I find that the documentary evidence submitted by the tenant alleging that other tenants have been disturbing her holds no weight as the onus of proof in this hearing is on the landlord to prove that the disputed 1 Month Notice is valid.

Based on the above, **I find** the landlord's 1 Month Notice is valid. **I dismiss** the tenant's application to cancel the Notice and **uphold** the landlord's 1 Month Notice. The agent verbally requested an order of possession during the hearing. Section 55 of the *Act* states:

#### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) **the landlord makes an oral request for an order of possession, and**

**(b) the director dismisses the tenant's application or upholds the landlord's notice.**

[emphasis added]

Given the above and taking into account the agent's oral request for an order of possession during the hearing, **I find** that the landlord is entitled to an order of possession effective **January 31, 2013 at 1:00 p.m.** This order may be filed in the Supreme Court and enforced as an order of that court.

### Conclusion

I dismiss the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause. I uphold the 1 Month Notice issued by the landlord.

I grant the landlord an order of possession effective **January 31, 2013 at 1:00 p.m.** This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 23, 2013