



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC

Introduction:

This was an application by the tenant to cancel Notices to End the Tenancy one for unpaid rent dated April 2, 2015 and one for cause dated April 2, 2015 to be effective April 30, 2015. The effective date on the Notice for cause is automatically corrected to May 31, 2015 pursuant to section 53 of the *Residential Tenancy Act* as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. Both parties were present at the hearing.

SERVICE:

I find that the Notices to End a Residential Tenancy were served personally on the Tenant on April 2, 2015. The landlord admitted service of the application for dispute resolution by registered mail.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The tenancy began on June 15, 2013. The current rent is \$1,300.00. The tenant said he paid a security deposit of \$650 but the landlord states it was \$500 he paid. The landlord served two Notices to End Tenancy one pursuant to section 46 for unpaid rent and one pursuant to section 47 for the following reasons:

- a) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- b) The tenant has knowingly given false information to prospective tenants or purchasers.

The parties agreed the tenant paid the outstanding rent within 5 days so the Notice to End Tenancy pursuant to section 46 for unpaid rent was cancelled. The landlord then proceeded to give evidence on the Notice to End Tenancy for cause. She said the tenants live upstairs and she and her family live downstairs in the home. She said that three or four times a week, the tenant's family makes so much noise until 3 or 4 a.m.

that she and her family cannot sleep. She said they yell and jump and use coarse language; she is not sure if it is the parents or children who make the noise.

The tenant said his children have friends over but they leave about 8 or 9 p.m. but sometimes by 10 p.m. He said he is not always home but the landlord comes up and complains sometimes about 4 p.m. in the afternoon which is unreasonable. The landlord said this is untrue and that the tenant has parties every weekend with jumping around and swearing. She said they play soccer outside and bounce balls overhead even late at night and her neighbours could testify to this. She said she has begged them not to make noise but they need the rent so have tried to be accommodating. We took a 5 minute break so she could fetch some neighbours to give evidence.

A former neighbour who lived there until about 6 months ago said she still visits there often. She has seen the boys of the tenant playing soccer late outside and could hear them bouncing balls upstairs until about 11:45 p.m. on eighty percent of her visits. She said she has a young child and has had to go to another room because she did not want him to listen to the loud, foul language. She also noted she could hear running back and forth of many feet overhead late at night. The tenant said his children don't play soccer in the house; he is not home always but his wife is there. On Friday nights, he says they watch movies.

A witness said she is a frequent visitor of the landlord's as the children are in the same school. She said she has personally seen the tenant's children outside yelling and screaming until about 11 p.m. She has heard them play soccer inside and use bad language.

I discussed the evidence with the parties and they agreed as follows:

1. The landlord will receive an Order of Possession effective June 30, 2015.
2. The tenant agrees he will pay rent for June and fix any damages in the home.

Analysis:

The Notice to End a Residential Tenancy is based on cause pursuant to section 47 of the Act. The *Residential Tenancy Act* permits a tenant to apply to have the Notice set aside.

The onus of proof is on the landlord to prove on a balance of probabilities that there is good cause to end the tenancy. I find the landlord has satisfied the onus. I find her evidence credible that the tenant and/or his family are significantly interfering with and disturbing the peaceful enjoyment of the landlord's family who live downstairs. I find her evidence credible and prefer it to the evidence of the tenant as her account is well

supported by her two witnesses who said they have personally seen and heard these disturbances that last late into the night. I dismiss the tenant's Application to set aside the Notice to End Tenancy. The tenancy ends on May 31, 2015 (as corrected).

Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 47 and has upheld the Notice. Pursuant to the above noted agreement, I grant the landlord an Order for Possession effective June 30, 2015.

Conclusion:

I dismiss the tenant's Application and find he is not entitled to recover filing fees due to his lack of success. I grant the landlord an Order for Possession effective June 30, 2015. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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 21, 2015

Residential Tenancy Branch

