



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## DECISION

**Dispute Codes:** CNC, MNDC and FF

### **Introduction**

This application was brought by the tenant seeking to have set aside a 30-day Notice to End Tenancy for cause served on September 10, 2009. The tenant also sought a Monetary Order for loss of quiet enjoyment and to recover the filing fee for this proceeding.

### **Issues to be Decided**

This application requires a decision on whether the Notice to End Tenancy should be set aside or upheld and whether the tenant is entitled to consideration for loss of quiet enjoyment.

### **Background and Evidence**

This tenancy in a side by side duplex began on July 20, 2009 for a 12-month fixed term set to end on July 31, 2010. Rent is \$700 per month and the landlord holds a security deposit of \$350 paid on July 20, 2009.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served as a result of three primary breaches of the rental agreement:

1. The tenant had, without authorization, parked a fifth wheel trailer on the rental property without authorization and in breach of his agreement to park only two vehicles;
2. The tenant had a satellite dish installed on the roof of the rental building without authorization;
3. The tenant had failed to do yard work as agreed when he moved into the rental unit.

In addition, the landlord gave evidence that since the issuance of the Notice to End Tenancy, the tenant has hosted in the order of 10 loud parties, going to as late as 3:30 a.m. and some on week nights to the great discomfort of the adjoining tenant who is the landlord's daughter.

As to the fifth wheel trailer, the landlord gave evidence that she had asked the tenant to remove it on August 30, 2009 and while it was eventually moved, it took approximately six weeks for the tenant to attend to it. The neighbouring tenant said that the trailer had created a traffic hazard as it made it very difficult for her and neighbours to seek traffic as they attempt to enter the roadway.

The trailer was initially parked on the road, but when neighbours complained, bylaw officers ordered the tenant to remove it from the street at which time he parked it on the rental property. He said the delay in moving it off the property was due to the fact that his truck was not sufficiently reliable to take it from Kelowna to his father's farm in Vanderhoof. His father, busy with fall harvest, could not come to get it sooner.

The landlord submitted photos showing an existing satellite dish installed by the landlord which had been attached to the eaves of the home. The tenant who wished to deal with another provider had, without the landlord's consent, had his own dish installed on the roof surface.

Finally, the landlord gave evidence that at the beginning of the tenancy, the tenant had been doing some work for her. She said that market value of the rental unit was \$850 per month but that she had lowered the rent to \$700 per month on the tenant's promise that he would do the moving and yard work. The landlord submitted photos showing that the yard had not been kept up.

The tenant stated that he had only promised to do the small plot in front of his own unit.

Other matters related to breach of the rental agreement and referenced in a letter from the landlord to the tenant dated August 30, 2009 included the tenant occupying the whole garage without consent and leaving pieces of a shed on the front lawn for a number of weeks.

As to the parties, the adjoining tenant submitted a written record of six such parties between September 11<sup>th</sup> and October 14<sup>th</sup>, one to 3:30 a.m. and four to 2:30 a.m., noting that police had been called on two occasions.

On the first occasion, the adjoining tenant asked the applicant tenant to turn the music down at about midnight, but it continued to 3 a.m. After that, she said she hesitated to approach the tenant directly out of concern for her own safety in interrupting a loud party.

## **Analysis**

I find that the tenant has breached material terms of the rental agreement by parking the large fifth wheel trailer on the property without the landlord's consent and by installing a satellite dish on the roof of the rental building without consent.

I prefer the evidence of the landlord with respect to the parties' disagreement over whether the tenant had committed to yard work. I accept the evidence of the landlord that she provided \$150 lower rent in anticipation such work, and that that amount would be far more consistent with care of the whole yard rather than the smaller portion suggested by the tenant.

I hesitate to place full weight on the complaints of partying they it were subsequent to and not cited in the Notice to End Tenancy in question. However, I find that the evidence of the continued partying adds credence to the landlord's position that the tenant has demonstrated a pattern of disregard for the tenancy agreement, the landlord and the adjoining tenant.

Therefore, I find that the Notice to End Tenancy of September 10, 2009 is lawful and valid and tenant's request that it be set aside is dismissed without leave to reapply..

Noting that as one possible outcome of this reserved decision, the landlord asked that if such was my finding, that she be issued with an Order of Possession under section 55(1) of the *Act* which compels the Order if a tenant's application to set a notice aside fails.

I find that the landlord is entitled to the Order of Possession to take effect at 1 p.m. on November 30, 2009.

I find that what the tenant has characterized as harassment or loss of quiet enjoyment falls within the landlord's rights and duties to manage the rental property. Thus, the tenant's application for relief is also dismissed without leave to reapply.

### **Conclusion**

Accordingly, the landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, for service on the tenant with an effective end of tenancy date of November 30, 2009