

## **DECISION**

### **Dispute Codes:**

CNR, CNC

### **Introduction**

This is the Tenants' application to cancel Notices to End Tenancy for Unpaid Rent and for Cause.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

### **Preliminary Issue**

At the onset of the Hearing, it was determined that the Notice to End Tenancy for Unpaid rent did not disclose the amount the Tenants were alleged to owe for rent, and instead disclosed an amount claimed for damages to the rental unit . Therefore, the Notice to End Tenancy for Unpaid Rent, dated November 27, 2009, is invalid and is cancelled.

### **Issues to be Decided**

- Should the Notice to End Tenancy for Cause, issued November 27, 2009, be cancelled?

### **Background and Evidence**

The Landlord's agent gave the following testimony:

The Tenants are in the habit of getting drunk and having loud arguments and fighting which is disturbing the other tenants in the rental property. The Landlord has already lost two other tenants and new tenants have just given their notice that they will be vacating the rental property due to this behavior. There was another incident last night, where the Tenants were loudly arguing.

The Tenants continue to lose their keys. The Landlord has issued replacement keys to the Tenants, but the Tenants broke a window and some blinds attempting to gain access to the rental unit. They have also damaged their front door, by kicking it in to gain access. It cost \$250.00 to fix the door.

The Tenants continually forget or neglect to lock the door to the common area, putting other tenants and the Landlord's property at risk.

The Landlord's Witness CG gave the following testimony:

One of the tenants at the rental property moved out about 1 ½ months ago because the Tenants were constantly fighting. The tenants who lived directly above the Tenants moved out December 31, 2009, because of the fighting. The fights usually occur late at night. Police have been called on occasion.

Upon being questioned by the Tenants' advocate, the Witness stated that he had written notice from the other tenants indicating their reasons for ending their tenancies.

The Tenants' advocate suggested that one of the other tenants moved out because they found a larger place for less rent. The Witness stated that the other tenants did find a larger place, but it was after they had given their notice and was not a factor.

The Tenants' advocate asked the Witness whether he knew who was calling the police. The Witness said other tenants called the police twice and on the 3<sup>rd</sup> occasion he thought it might have been a neighbor to the rental property.

The Landlord's Witness CM gave the following testimony:

The Witness lives on the floor above the Tenants. He has been disturbed twice in the last month by the Tenants' fighting, once during the day and once at night. He found the noise aggravating. The Witness left the rental property about 5 minutes after the daytime argument to get away from the noise.

The Landlord's Witness RM gave the following testimony:

The Witness is a tenant at another rental property which backs on to the Tenants' rental unit. Her window is approximately 10 feet away from the Tenants' window. The

Tenants are constantly arguing an, slamming doors. She can hear them from her suite and has also heard the sound of braking glass from the Tenants breaking their window. This occurred in the wee hours of the morning. The Witness does not know the Tenants' names, but has observed them many times from her home and knows them to be the Tenants in question.

The Tenants and their advocate gave the following testimony and submissions:

The Tenants stated that they received a copy of the Notice to End Tenancy for Cause on November 29, 2009.

The Tenants stated that the police were never called to the rental unit. The male Tenant testified that he has never struck the female Tenant.

The Tenants agreed that they had broken the window, but stated that they paid for the repairs. The Tenants agreed that they had ruined their door. The Tenants denied leaving the door to the common area unlocked and stated that other tenants in the building were responsible.

The Tenants testified that other tenants in the building were doing their laundry after 10:00 p.m. at night and it was disturbing them. The Tenants testified that once they were arguing and went outside, but were only outside for a couple of minutes.

The Tenants' advocate submitted that there was no evidence that other tenants had ended their tenancies due to the actions of the Tenants, and no evidence that the police had been called as a result of the Tenants' arguments.

The Landlord's agent asked for an Order of Possession, but stated that if the Tenants paid the rent for January in the amount of \$375.00 within a few days (which the Tenants agreed remains unpaid), the Landlord would agree to them staying in the rental unit until January 31, 2010.

**Analysis**

On the Notice to End Tenancy, a copy of which was provided in evidence by the Tenants, the Landlord listed the following reasons for ending the tenancy:

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

- Significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- Put the landlord's property at significant risk.

I accept the testimony of the Landlord's Witnesses with respect to the disturbances caused by the Tenants and therefore prefer the testimony of the Landlord with respect to the reason for the other tenants giving their notice. I find that the Tenants have significantly interfered with or unreasonably disturbed other occupants at the rental property and therefore dismiss the Tenants' application to cancel the Notice to End Tenancy for Cause issued November 27, 2009.

The Landlord requested an Order of Possession. Section 55(1) 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.

Pursuant to the provisions of Section 55(1), I hereby grant the Landlord an Order of Possession effective two days after service of the Order upon the Tenants. The Landlord has agreed not to serve the Tenants with the Order of Possession until January 29, 2010 (two days prior to January 31, 2010), on the condition that the

Tenants pay the Landlord outstanding rent for the month of January, 2010 in the amount of \$375.00, within a few days of this Decision.

### **Conclusion**

I hereby grant the Landlords an Order of Possession against the Tenants effective 2 days after service of this Order upon the Tenants. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: January 14, 2010

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