Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause.

On May 12, 2014 the Landlord submitted documents to the Residential Tenancy Branch. The Agent for the Landlord stated that copies of these documents were mailed to the Tenant on May 09, 2014. The Tenant acknowledged receiving these documents on May 13, 2014. As the Tenant acknowledged receipt of the Landlord's evidence, it was accepted as evidence for these proceedings.

The Tenant stated that on May 13, 2014 she submitted 44 pages of evidence to the Residential Tenancy Branch and that she served copies of that evidence to the Landlord, by courier, on May 13, 2014. The Agent for the Landlord acknowledged receiving the documents on that date.

The Landlord and the Tenant were advised that I was not in possession of the evidence submitted by the Tenant. I advised the parties that I intended to proceed with the hearing and that an adjournment would be considered if, after giving the parties the opportunity to consent to the content of any particular document submitted by the Tenant, it became necessary me to view a particular document. The decision to proceed was made in spite of the objections of the Tenant.

There was insufficient time to conclude the hearing on May 22, 2014, so the matter was adjourned**.** The matter was reconvened on July 21, 2014 and was concluded on that date.

At the conclusion of the first hearing the Tenant was advised that she has the right to resubmit a copy of her evidence package, in the event I am unable to locate it. The Tenant advised that she would resubmit an exact copy of her evidence package. After the conclusion of the initial hearing I was able to locate the package of evidence submitted by the Tenant. The Tenant also submitted a duplicate copy of this package to the Residential Tenancy Branch on May 28, 2014.

With the exception of the duplicate copy of the Tenant's evidence package, no documentary evidence was accepted after the hearing commenced on May 22, 2014.

Both parties were represented at both hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make relevant submissions.

On several occasions the Tenant stated that she did not feel she was being given a fair opportunity to make submissions and she accused the Arbitrator of being biased. I note that the hearing lasted for approximately three hours; that the Tenant had as much, if not more, time to speak than the Landlord during this time; and that the Tenant made several lengthy submissions that were interrupted because they were not relevant to the issues in dispute.

On several occasions the Tenant was prevented from asking questions of the witnesses that were repetitive or irrelevant to the issues in dispute, which clearly agitated the Tenant. When questioning the Witness #2 the Tenant was eventually directed to pose her questions to the Arbitrator, who would then relay them to the Witness, as the Tenant's behavior toward the Witness was becoming inappropriate.

I note that the Tenant exited the teleconference a few minutes prior to the conclusion of the hearing on July 21, 2104, after stating that she had the right to decide who she will communicate with, including the Arbitrator.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Act,* be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on January 15, 2014 and that the Tenant is required to pay monthly rent of $401.00 by the first day of each month. A copy of their tenancy agreement was submitted as evidence.

The Agent for the Landlord #2 stated that she posted a One Month Notice to End Tenancy for Cause on the door of the rental unit on March 26, 2014. The Tenant stated that she located this Notice on March 27, 2014.

The One Month Notice to End Tenancy that is the subject of this dispute is dated March 26, 2014 and declared that the Tenant must vacate the rental unit by April 30, 2014. The reasons cited for ending the tenancy are 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 or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant

or the landlord; the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and that there has been a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after receiving written notice to do so.

The Landlord contends that the Tenant breached a material term of the tenancy agreement when she used a portable washing machine in the rental unit. The Agent for the Landlord stated that prior to entering into this tenancy agreement the Tenant was told there was no washing machine in the rental unit and that she could not install a washing machine in the rental unit. There is nothing in the written tenancy agreement that prohibits a tenant from using a portable washing machine in the rental unit.

The Agent for the Landlord #2 stated that she observed the Tenant moving a portable washing machine into the rental unit at the start of the tenancy, at which time she informed the Tenant that she was not allowed to have a washing machine in the unit.

The Tenant stated that the Landlord did not inform her that she could not have a portable washing machine in the unit when they discussed the terms of the tenancy agreement or when she was moving into the rental unit in January of 2014.

The Agent for the Landlord #2 stated that there has been a notice on the bulletin board in the lobby that informs tenants that they are not permitted to "operate" washers, dryers, and dishwashers in their units. The Agent for the Landlord #2 stated that this notice has been posted on this bulletin board since prior to January of 2014. The Tenant stated that she did not notice this notice on the bulletin board.

The Landlord and the Tenant agree that on March 12, 2014 the Tenant was informed that she was not permitted to have a washing machine in her rental unit. The Tenant stated that this is the first time she was advised that she could not have a washing machine in the rental unit. She stated that she has seen a notice prohibiting the use of washing machines since March 12, 2014. She stated that she has not used her washing machine since being advised that she should not use it and she does not intend to use it in the future.

The Agent for the Landlord #2 stated that sometime after this tenancy began soapy water overflowed from several toilets on the first floor of the residential complex. She stated that a plumber was contacted regarding the problem but the source of the problem was not identified at that time. The Tenant stated that she has no knowledge of this incident.

The Agent for the Landlord #2 stated that on March 12, 2014 soapy water again overflowed from several toilets on the first floor of the residential complex. She stated that she contacted a plumber, who informed her that the problem was likely the result of someone using a washing machine or dishwasher in one of the rental units.

The Agent for the Landlord #2 stated that she went to all of the rental units on March 12,

2014 to see if she could locate a washing machine or dishwasher. The Landlord and the Tenant agree that on March 12, 2014 the Agent for the Landlord observed a portable washing machine stored in the closet of the Tenant's rental unit. The Agent for the Landlord #2 stated that she did not check inside the washing machine to determine if it had been recently used and that she did not see any evidence of a flood in the unit, although she did not inspect the entire unit.

The Tenant stated that when she uses the washing machine she moves it into the kitchen and allows it to drain into the kitchen. She stated that she did not use the washing machine on March 12, 2014. She stated that she always uses the washing machine in accordance with the operating instructions and that she has never had a flood in the unit as a result of the washing machine.

The Tenant stated that she does not believe soapy water drained in her sink could spill out of a toilet in rental units that are not directly below her unit.

Witness #1, who stated he is a licensed plumber, stated that he is familiar with the residential complex as he has worked in the building on many occasions. He stated that he viewed soapy water flowing from several toilets on the first floor of the residential complex and he has never previously observed that type of flood. He stated that it is entirely possible that the "flooding" was the result of a washing machine being used in the rental unit, even though the toilets were not directly below the rental unit and even if the machine was being drained into the kitchen sink.

The plumber also stated that it is possible the "flooding" was the result of a washing machine being used in a different rental unit or by an occupant of another unit using an excessive amount of bubble bath. He stated it is less likely that a dishwasher is the source of the problem. He stated that it is also possible a laundry machine located on the 16th floor could be the source of the problem, although he has no knowledge of a problem like this occurring prior to the Tenant moving into the rental unit and he knows there has been a washing machine on the 16th floor for some time. He stated that this is an older building and, in his opinion, the plumbing is not designed to support a portable washing machine.

The Landlord and the Tenant agree that the washing machine is still being stored in the rental unit.

The Landlord is also attempting to end this tenancy on the basis of the Tenant's behaviour towards the Landlord's agents and occupants of the residential complex. The Agent for the Landlord #2 stated that when she went to the rental unit on March 12, 2014 to attempt to locate the source of the soapy water, she advised the Tenant there was an emergency and she needed to inspect the rental unit in an attempt to locate the source of the problem. She stated that the Tenant did allow her to enter the rental unit but she yelled at her and that she was verbally abusive throughout the inspection.

The Tenant acknowledged that her voice was likely raised during this interaction,

because she has a hearing impairment, but she stated did not use abusive language. The Tenant acknowledged that she was upset because she did not believe her washing machine could be the source of the soapy water; because she believed the entry was unlawful; and because she did not believe Witness #2 should have been present.

The Witness #2 stated that she accompanied the Agent for the Landlord #2 to the rental unit on March 12, 2014, at the request of the Agent for the Landlord #2. She stated that she is not an employee of the Landlord and that she simply agreed to act as a witness in the interaction. She stated that she remained in the common hallway during the entire inspection and that she did not enter the unit, although she could see inside the unit and could hear the Tenant yelling at the Agent for the Landlord and using foul language. She stated that the Tenant told her to leave the common hallway and the Tenant repeatedly told the Agent for the Landlord to leave the rental unit.

Witness #2 contends that the she could see inside the rental unit because the Tenant was holding the door to the unit open and was yelling at her. The Tenant contends that Witness #2 was holding the door open.

The Landlord and the Tenant agree that the Tenant was given written notice that her behaviour during the inspection was a breach of the tenancy agreement.

The Agent for the Landlord #2 and the Tenant agree that the Tenant followed the Agent to the office on the first floor after the inspection on March 12, 2014. The Agent for the Landlord #2 stated that the Tenant continued to yell at her regarding the inspection and that she was using profanities. The Tenant stated that she went to the first floor to express her concerns about the Witness #2 being present at the inspection and to explain that a flood in a suite not directly below her unit could not be her responsibility. She stated that she may have been speaking loudly and that she was not using profanities, as she never uses profanities.

Witness #2 stated that after the inspection on March 12, 2014 she found a note under her door from the Tenant, a copy of which was submitted in evidence. This note informed the Witness that she is forbidden to enter the Tenant's home. The Tenant stated that she knocked on Witness #2's door, which is unit 101, with the intent of providing her with the aforementioned note; that the Witness opened the door and slammed it in her face; and that she left the note under her door.

Witness #2 stated that at approximately the same time she found the aforementioned note she could hear the Tenant yelling at the Agent for the Landlord #2, using swear words and foul language. Although the Witness #2 was hesitant to repeat the profanities used by the Tenant, at my request she stated some of the profanities she overheard. The profanities used were entirely inappropriate. She stated that she could hear the Tenant yelling through the closed door of her suite.

The Landlord and the Tenant agree that on March 22, 2014 the Tenant was served with notice that the Landlord intended to enter the rental unit on March 24, 2014, between

9:00 a.m. and 5:00 p.m., for the purposes of a suite inspection.

The Agent for the Landlord #2 reported that when she served the notice of entry to the Tenant, at approximately 4:30 p.m., the Tenant began yelling at her so she returned to the first floor. The Agent for the Landlord #2 recorded this incident on a Proof of Service she completed on the same date, on which she noted that the Tenant "yelled very much". The Tenant stated that she did tell the Agent for the Landlord #2 that entry to the rental unit would be denied; that she did not yell; and that the Agent for the Landlord #2 "ran" down the stairs after the notice was served.

Witness #3 stated that sometime after 6:00 p.m. on March 22, 2014 he was inside his suite on the first floor when he heard yelling. He stated that the yelling disturbed him so he opened his door and observed a woman shouting at the closed office door, using "filthy" language. He stated that when he asked the woman to keep the noise down, she "lunged" towards his door, repeatedly using profanities. He stated that he quickly closed his door and that the yelling lasted for several more minutes.

Witness #3 stated that he cannot describe the woman who was yelling, as the interaction was very brief. He stated that he does not know the Tenant. He stated that he believes the woman yelling at the door was the Tenant because the Agent for the Landlord #2 told him it was.

The Tenant stated that she was not yelling outside the office door on March 22, 2014 and that she has never had an interaction with Witness #3. She thinks Witness #3 is either confused or being untruthful.

The Landlord and the Tenant agree that when agents for the Landlord attempted to inspect the rental unit on June 24, 2014 the Tenant told them they could not enter the unit and she would not unlock the door. The parties agree that the Tenant was advised they would be entering; that the door was unlocked with the Landlord's key; and that the Agent for the Landlord spoke with the Tenant, at which time the Tenant repeated that the agents for Landlord were being denied entry and that they were being filmed. The agents for the Landlord left after the Tenant verbally confirmed that she still had a washing machine in the rental unit.

The Agent for the Landlord #2 stated that she was disturbed by the tone of several text messages sent by the Tenant on March 22, 2014, a copy of which were submitted as evidence. The Tenant stated that she had to send the text messages because she was angry, and remains angry, that her privacy was violated.

Witness #2 stated that on March 23, 2014 she and her husband were walking in the parking lot when the Tenant yelled at them and called them names from her rental unit. At my request the Tenant repeated some of the things said by the Tenant, which included one profanity. The comments and profanities were entirely inappropriate. She stated that she told the Tenant to shut up but she did not use profanities, as she does not normally do so.

The Tenant stated that she observed a figure in the parking lot who she thought might be someone who "glared at her" in the past. She stated that although she did not know it was the Witness #2 in the parking lot, she yelled out "trespasser" but did not use profanities or call her names. She stated that the person in the parking lot, who she now understands was Witness #2, replied with a variety of profanities, which the Tenant loudly repeated during the hearing without hesitation and without being directed to do so.

Witness #2 stated that since the incident on March 12, 2014, the Tenant frequently raises her middle finger to her in a manner that is commonly understood to be insulting. She states that when the Tenant is passing her apartment she often waves her arms in an apparent attempt to attract her attention, and then raises her finger. The Tenant denies the allegations.

Witness #2 initially stated that she feels threatened by the Tenant, although she later stated that she is not concerned for her physical safety. She stated that she does not like the way she has been/is being treated by the Tenant; that she did consider reporting the incident in the parking lot to the police; and that she has not yet made a police report regarding any of her interactions with the Tenant.

The Landlord and the Tenant agree that on June 26, 2014 the Tenant attended a public meeting of the Rotary Club, which is the Landlord of the rental unit. The Agent for the Landlord contends that the Tenant attempted to discuss issues in dispute at this hearing at the meeting; that she was "ranting and raving" at the president of the club; that the president repeatedly told her that the meeting was not the appropriate time to discuss concerns about her tenancy; and that the president was eventually able to persuade her to bring her concerns back to the management company.

The Tenant stated that she was not "ranting" at the meeting, although she acknowledged she was speaking very quickly; that she was never asked to leave the meeting; that she felt it important that the president of the club was aware that the Agent for the Landlord #2 was not acting in a professional manner on a variety of issues; and to suggest that the problem with the soapy water could have been the result of a prank she read about on the internet, which she described as a "toilet foam bomb".

At the conclusion of the hearing the Agent for the Landlord #2 stated that her "stomach is up to my neck" and that she does not believe she can continue to manage the building if the tenancy is allowed to continue. The Agent for the Landlord concluded by saying that the behaviour demonstrated by the Tenant during these proceedings is typical of the behaviour she has demonstrated during her tenancy.

Analysis

Section 47(1)(h) of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy if a tenant has failed to comply with a material term of the tenancy and the tenant has not corrected the situation within a reasonable time after the landlord gives

written notice to do so.

A material term is a term that the both parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. The burden of proving that a term is a material term rest with the party who alleges it is a material term.

I find that the Landlord has failed to establish that there is a term in the tenancy agreement that prohibits the Tenant from having a washing machine in the rental unit. In reaching this conclusion I was heavily influenced by:

- the absence of evidence that corroborates the Agent for the Landlord's testimony that this term was discussed prior to the parties entering into the tenancy agreement
- the absence of evidence that refutes the Tenant's testimony that this term was not discussed prior to the parties entering into the tenancy agreement
- the absence of any reference to this term in the written tenancy agreement
- the absence of evidence that corroborates the Agent for the Landlord's testimony that the Tenant was told she could not have a washing machine in the rental unit when she was moving into the rental unit
- the absence of evidence that refutes the Tenant's testimony that she was not told she could not have a washing machine in the rental unit when she was moving into the rental unit.

For a term to be a material term of the tenancy, I find that the must be conclusive evidence to show that the parties discussed, and agreed to, the term prior entering into a tenancy agreement. As that is not the case in regards to the washing machine, I find that the Landlord does not have the grounds to end this tenancy pursuant to section 47(1)(h), in regards to the washing machine.

Section 47(1)(d)(iii) of the *Act* authorizes a landlord to end a tenancy if a tenant is placing the landlord's property at significant risk. In circumstances where the use of a washing machine is causing a septic system to overflow, for example, a landlord may be entitled to end the tenancy if the tenant does not take corrective action, even if there is nothing in the tenancy agreement that prohibits the use of washing machine.

On the basis of the testimony of the Agent for the Landlord #2, I find that there is a rule that prohibits the use of washing machines in rental units and that this rule was posted on the bulletin board in the lobby prior to the start of the tenancy. On the basis of the testimony of the plumber, who stated that the source of the soapy water was likely a washing machine and that he does not believe the plumbing is capable of supporting a washing machine in a rental unit, I find that this rule was reasonable.

I find that the Landlord would have grounds to end this tenancy if the Tenant continued to use a portable washing machine in the rental unit after she was advised not to use it and after she was advised of the potential dangers of using it.

On the basis of the testimony of the Tenant, I find that on March 12, 2014 she was advised that she was not allowed to use a washing machine in her rental unit. In the absence of evidence that corroborates the Agent for the Landlord's testimony that she was told not to use the washing machine prior to that date, I must conclude that this was the first time she was provided with this direction. In reaching this conclusion I note that the Landlord has submitted no evidence to establish that the Tenant read the notice prohibiting the use of washing machines that has been posted in the lobby since prior to the start of the tenancy.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant has not used the washing machine since March 12, 2014 and that she does not intend to use it in the residential complex in the future. On the basis of this declaration, I find that the Tenant is not placing the Landlord's property at risk and that the Landlord does not, therefore, have grounds to end this tenancy in accordance with section 47(1)(d)(iii) of the *Act.*

In determining this matter, I find it is not necessary to determine whether it was the Tenant's washing machine that was the source of the flooding on March 12, 2014. Even if it was the Tenant's washing machine, I cannot conclude that she knew the plumbing in the complex was not able to support a portable washing machine. I therefore find it was reasonable for her to use the washing machine for the purpose it was intended, until such time as she was advised the use of the machine was placing the complex at risk.

In reaching this conclusion I have placed little weight on the undisputed fact that the washing machine is still being stored in the rental unit. As long as the Tenant does not place the property at risk by using the machine, I can find no reason to conclude that she must physically remove it from her unit. I find it is entirely reasonable for the Tenant to store the washing machine in her unit.

Section 47(1)(d)(i) of the *Act* authorizes a landlord to end a tenancy if a tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

On the basis of the testimony of the Agent for the Landlord, I find that the Tenant's actions during the inspection on March 12, 2014 interfered with the Landlord's right to inspect the rental unit on that date. Although she did not physically prevent the inspection, I find that she was verbally abusive to the Agent for the Landlord and made it difficult for her to complete the inspection. In determining that the Tenant was verbally abusive to the Agent during the inspection I was influenced by the testimony of Witness #2, who also stated that the Tenant was verbally abusive.

In determining this matter I have placed little weight on the Tenant's testimony that she did not use abusive language, as that testimony conflicts with the testimony of the two other people present.

In determining this matter I was influenced by section 29(1)(f) of the *Act*, which allows a landlord to enter a rental unit if an emergency exists and the entry is necessary to protect life or property. I find that an emergency did exist on March 12, 2014 when the Landlord was attempting to locate the source of soapy water flowing from toilets in the residential complex and that it was reasonable for the Landlord to enter rental units to identify the source of the soapy water. I therefore find that the Tenant's objection to the inspection was unreasonable.

Even if I accepted the Tenant's testimony that Witness #2 was holding the door open and looking into the suite from the common hallway, I find the Tenant's response was inappropriate. I find that the Landlord's right to access the rental unit pursuant to section 29(1)(f) of the *Act* includes the right to bring whatever resources are reasonable to respond effectively to the emergency. In the event of a leak, for example, I find it unreasonable to conclude that a Landlord could not bring a plumber to the rental unit to repair the leak, even if the plumber was not being paid. Similarly, I find it reasonable for the Agent for the Landlord #2 to ask a third party to witness the entry, in the event she had concerns about the Tenant's response to the entry.

On the basis of the testimony of the Agent for the Landlord #2, I find that the Tenant unreasonably disturbed the Agent for the Landlord on March 12, 2014 when she went to the first floor of the residential complex to continue arguing about the inspection. I favour the Agent for the Landlord's testimony that the Tenant was yelling and using profanities during this interaction over the Tenant's testimony that she was not using profanities, but may have been speaking loudly, because the Agent for the Landlord's testimony was corroborated by the testimony of Witness #2. While a tenant has every right to express concerns to a landlord, they have an obligation to do so in a manner that is reasonably respectful. In my view, the Tenant's behaviour during this interaction was not necessary or reasonable.

I also find that the Tenant unreasonably disturbed Witness #2, who is an occupant of the rental unit, when she yelled and used profanities on the first floor of the complex on March 12, 2014. As the Witness could hear the argument through her closed door, it is apparent to me that the Tenant's voice was raised to an inappropriate level.

I find that the Tenant unreasonably disturbed the Agent for the Landlord #2 when she yelled at her after she was served with a notice of entry on March 22, 2014. I favour the testimony of the Agent for the Landlord, who stated that the Tenant yelled at her when the notice was served over the testimony of the Tenant, who denied yelling. This conclusion is based, in part, because the testimony of the Agent for the Landlord#2 is corroborated by a written record that she created on the day of the incident.

In determining this particular matter I was guided by *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, in which the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the*

> *particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I find the version of events provided by the Tenant regarding service of the notice of entry to simply be less likely than the version of events provided by the Agent for the Landlord #2. I specifically note that it is unlikely that the Agent for the Landlord #2 would have "run" down the stairs, as the Tenant describes it, if the Tenant was not yelling at the Agent.

On the basis of the undisputed evidence, I find that the Tenant unreasonably interfered with the Landlord's right to inspect the rental unit on March 24, 2014, when she denied the Agent for the Landlord entry into the rental unit. Section 29(1)(b) of the *Act* allows a landlord to enter a rental unit if at least 24 hours, and not more than 30 days, before the entry, the landlord gives the tenant written notice that indicates the purpose for entering, which must be reasonable, and the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees. Given that the Landlord had concerns about the washing machine in the rental unit I find that it was reasonable for the Landlord to inspect the unit on March 24, 2014. As the Tenant had been given proper notice of the inspection, I find that she had no right to prevent the Landlord from entering the unit.

I find that the Tenant unreasonably disturbed the Agent for the Landlord #2 when she sent a series of text messages on March 22, 2014. I find that the text messages are intimidating and that the Tenant knew, or should have known, that they would disturb the recipient. I specifically note that there was no need for the Tenant to initiate this communication, as she had already previously informed the Agent that she believed her rights had been violated on March 12, 2014 and she did not have the right to refuse entry for the site inspection. This causes me to conclude that the primary purpose of the messages was to intimidate or harass the recipient.

I find that the Tenant unreasonably disturbed Witness #2 on March 23, 2014 when she yelled out her window and used profanities that were directed to this Witness. I favour the testimony of Witness #2, who stated that the Tenant yelled profanities and that she did not respond with profanities, over the testimony of the Tenant, who stated that she did not yell any profanities and it was the Witness who used profanities. I found the Witness to be a credible witness, as her testimony was provided in a consistent and forthright manner. I also note that the Witness is a seemingly independent third party, who would have less motivation to be dishonest than the Tenant, whose tenancy hangs in the balance.

I did not find that the Tenant was a particularly credible witness, in part, because she stated that she never uses profanity. This self characterization was inconsistent with her

testimony at the hearing, when she loudly, and without hesitation, described profanities allegedly used by Witness #2. Conversely, I found that Witness #2 was genuinely hesitant to use profanities during the hearing and I therefore find it unlikely that she would have yelled profanities from the parking lot.

In determining credibility in this particular matter I was again guided by *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000. I found the Tenant's version of events of March 23, 2014 simply lack credibility. Although she alleges she did not know who was in the parking lot when she yelled out her window, it makes no sense that she would call this person a "trespasser", unless she believed she was the person who had violated her privacy on March 12, 2014.

I note that even if the Tenant did not know it was Witness #2 she was yelling at and that she mistakenly believed it was an occupant who had "glared at her", I think most reasonable people would understand that yelling out a window would likely disturb that occupant and other people who could reasonably be expected to overhear her comments.

As I have consistently found Witness #2 to be a more reliable witness, I find it reasonable to also favour her testimony that the Tenant frequently raises her finger to her in a manner that is commonly understood as being an insult over the Tenant's denial. I find that these actions would disturb an average person and that it did disturb Witness #2.

In determining credibility I was influenced, to some degree, by the Tenant's behaviour at these proceedings. I found her behaviour to be argumentative and confrontational. I find that her behaviour at these proceedings is consistent with the type of behaviour described by the other parties, which gives credibility to their testimony.

When I considered all of these incidents in their entirety, I find that the Tenant's behaviour has unreasonably disturbed and/or significantly interfered with the Agent for the Landlord #2 and at least one occupant of the rental unit. I therefore find that the Landlord has grounds to end this tenancy, pursuant to section 47(1)(d)(i) of the *Act* and I dismiss the Tenant's application to set aside the One Month Notice to End Tenancy for Cause.

In determining this matter I have placed no weight on the testimony of Witness #3. While I accept his testimony that he was disturbed on March 22, 2014 by a female yelling at the closed office door, I find that I have insufficient evidence to conclude that the Tenant was the female he observed. While I accept that the Agent for the Landlord #2 told him that the woman was the Tenant, it is not clear to me whether the Agent knew it was the Tenant because she was inside the office after business hours or she simply speculated it was her given their earlier interaction on that date.

In some circumstances I would consider reconvening the hearing to clarify this issue however in these circumstances I do not find it necessary, as I find that the Landlord has

established grounds to end this tenancy without relying on the information provided by Witness #3.

In determining whether the Landlord had grounds to serve the Tenant with a One Month Notice to End Tenancy in March of 2014, I have placed no weight on the incident that occurred at the Rotary Club meeting on June 26, 2014. As this incident clearly occurred after the Notice was served, the Landlord cannot have served the Notice as a result of this incident.

I do find that the incident on June 26, 2014 supports my conclusion that this tenancy should end, as I have no reasonable expectation that the Tenant's behaviour toward the Agent for the Landlord #2 will improve. Even if I accepted the Tenant's testimony regarding the incident on June 26, 2014, in its entirety, I find it wholly inappropriate for the Tenant to bring issues regarding her tenancy to a public forum that is not intended to address such concerns, particularly when the issues in dispute are still the subject of a dispute resolution proceeding. I find that her decision to address the meeting indicates that she will continue to disturb the Landlord with her erroneous belief that her rights have been violated.

Conclusion

As I have dismissed the Tenant's application to set aside the One Month Notice to End Tenancy, pursuant to section 55(1) of the *Act*, I grant the Landlord an Order of Possession, as requested at the hearing. The Order of Possession will be effective on July 31, 2014.

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: July 23, 2014

Residential Tenancy Branch