

BORGER MANAGEMENT, INC. v. NELSON, 959 A.2ND 694 (2008)

Court: D.C. Court of Appeals, opinion by Farrell, AJ

Judicial History: Residential landlord filed a complaint for possession. D.C. Superior Court dismissed the complaint, concluding that the notice to quit was defective because it did not provide the tenant with an opportunity to cure, and landlord appealed.

Facts: Landlord issued a Notice to Cure or Quit to tenant due to complaints from other tenants regarding loud music coming from tenants' apartment. The notice stated that tenant must either cure the problem within thirty days or vacate the apartment. The notice also stated that renewal of such violation would be cause for the landlord to "seek possession of your premises without further opportunity on your part to cure such a violation". Tenant stopped the loud music within the thirty day period, but resumed after the thirty day period had expired. Landlord issued a notice to quit against tenant, and the second notice did not provide a new period to cure the violations. After tenant refused to vacate her apartment, landlord filed a complaint for possession. At a hearing, the trial court dismissed the complaint, concluding that the notice to quit was defective because it did not provide tenant with an opportunity to cure. Landlord then brought this appeal.

Holding: The Court of Appeals held that:

- 1.) once prior violations have been sufficiently cured, landlords are required under the Rental Housing Act to give tenants thirty days to cure any subsequent violations, but when there is a similar repeat violation after initial thirty-day period, the Act allows for fact sensitive inquiry into whether tenant has effectively cured; and,
- 2.) once landlord conceded that tenant cured the noise violation within the thirty-day period, it was required to issue a new notice to cure or quit any subsequent violation and provide tenant with thirty days to cure before it could seek possession.

Reasoning:

- 1.) The fact sensitive inquiry into whether a tenant has effectively cured allows landlords to issue only a notice to quit, even after the cure period has elapsed, when a tenant temporarily stops the violation in the thirty-day period but repeats the same violation soon afterwards.
- 2.) Neither the Rental Housing Act nor accompanying regulations provide for a waiver of the tenant's opportunity to correct a new violation once the tenant has sufficiently cured a previous violation.

Decision: Affirmed.