



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Shek Holdings Co. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to the tenant's application seeking to cancel a Notice to End Tenancy given for cause.

Issue(s) to be Decided

Does the landlord have caused to end this tenancy?

Background and Evidence

This tenancy began on August 1, 2012 and is set for a fixed term ending July 31, 2013 following which time the tenancy may continue on a month-to-month basis. Rent of \$1,250.00 per month is payable in advance on the first of each month. The tenant paid a security deposit and a pet deposit each in the amount of \$625.00 on July 15, 2012. The landlord states that the tenant is allowed to have one pet, a dog.

On April 30, 2013 the landlord served a Notice to End Tenancy for cause effective May 31, 2013 on the ground 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 landlord testified that he has received multiple complaints from other residents in the building with respect to the disturbances caused by this tenant. The landlord says he is at risk of losing his other tenants if he is not able to evict this tenant in order to stop the disturbance to the other residents.

The landlord testified that he does not live on site but the witnesses who will testify do. The landlord testified that JM resides in the suite right below this tenant and BR and JK live right next door to her. The landlord says he receives constant phone calls and

texts from other tenants who complain as well, but only these three people have agreed to come forward and be witnesses at this hearing.

The landlord testified that the reports he receives are that the tenant plays loud music, slams doors and jumps up and down at all hours of day and night but mostly at night. Further that she has two dogs when she is only allowed to have one dog; that she allows the dogs to run off leash in the hallways, that her dog has "gone after" Audrey's dog "Anna" and that her dogs leave feces in the hallways. The landlord says that while the tenant fancies herself as the building "dog whisperer" she is not and she is not in control of her dogs.

The landlord submits that while the tenant says she was not at home during certain events contained in the complaints made by other tenants it is clear that if she is not home there must be someone else using her suite.

JM, witness for the landlord, testified that the tenant brought a second pet into the apartment even though the landlord only allows one pet per unit. JM testified that he and his fiancé live below the tenant and they are disturbed by her dogs. JM submits that there is more noise with two dogs than one could expect with one animal. JM testified that when the tenant is out her pets make a lot of noise by barking and howling.

In addition to noise from her dogs, JM testified that on February 24, 2013 he and his fiancé were disturbed when the tenant came home at 2 a.m. and, between 2 a.m. and 5 a.m., she engaged in stomping around her suite right above their bedroom. JM testified that it sounded as though she had put on heavy shoes and was stomping around deliberately. After the stomping stopped, the dogs began to howl. JM testified that on February 26, 2013 at 7 p.m. the tenant apparently had guests in her apartment and they were playing loud music and jumping up and down. JM testified that this went on well past 1:00 am. During this event JM says the tenant and/or her guests were repeatedly slamming doors as she entered and exited the apartment and the building. JM testified that dog feces were tracked into the building during this event however he did not actually see that it was the tenant and/or her guests who tracked the feces into the building. On March 8, 2013 and again on March 11, 2013 between 1 and 2 a.m. the same noises occurred with respect to stomping.

On April 12, 2013 JM says the tenant had a confrontation with his fiancé in the hallway during which event she yelled at JM's fiancé telling him he was immature. JM says she referred to his fiancé and himself by other derogatory terms which he did not care to repeat. JM testified that his fiancé told the tenant that she was the one who was being immature by stomping around in her suite knowing that it was disturbing them in their

suite below. JM says the tenant responded that she had only done so on five occasions. JM says he sent a text message to the tenant about the problems and advised that he would be open to discussing the issues but would not engage in a screaming match. JM says the parties never met because the tenant could never find a time to do so. JM says that on May 17, 2013 the tenant ran her shower from 5:30 p.m. until 11:00 p.m. and the building ran out of hot water.

BR and JK live right next door to the tenant. BR testified that the tenant and her dogs have been very disruptive. BR testified that the tenant's dogs bark at all hours whether she's home or not but more so when she's not home. BR testified that the tenant shows no respect for any of the other residents and she frequently comes home between 2 and 3 a.m. bringing people home with her and making noise. BR testified that it has been very disruptive and upsetting having this tenant in the building. BR confirmed that he and JK have the same complaints about the tenant.

BR noted that the tenant refers to her second dog as "Michael's dog" but she told BR previously that the second dog is actually her own dog but because the landlord is an "asshole" and won't allow two dogs she pretends it is Michael's dog.

BR testified that while there were other pets in the building the only dogs that bark incessantly are the tenant's dogs and this occurs even when she is home because she has not trained the dogs to listen to her. BR submits that these disturbances have been going on from December 2012 until April 30, 2013 when the notice was apparently served at which time she seems to have taken some steps to stop the noise. BR testified that he has no other specific dates with respect to incidents. BR stated to the tenant "My point is when the dogs are home they bark a lot there were lots of occasions very late when you made a lot of noise".

In response to the allegations the tenant testified that she only owns one dog. The tenant says that her dog is a therapeutic dog that she acquired as a result of abuse she suffered at the hands of her ex-husband. The tenant says she moved to Vancouver from Quebec to get away from her ex-husband when they broke up three years ago this past September. The tenant says that while she has documentation to prove the dog is a therapeutic dog but she did not provide this in evidence. The tenant says she has had her dog for 10 or 11 years.

The tenant says however that while she only owns one dog she does look after ex-boyfriend's dog when he is out of town for periods of up to 2 weeks at a time. The tenant says she also looks after Renee's dog "Louie" and she looks after Audrey's dog "Anna" from time to time. However, the tenant says she takes the dogs to doggy

daycare when she is not home. The tenant also said that she works in a coffee shop and she takes the dogs to work with her and they sit outside while she works. The tenant testified that all the dogs sleep when she looks after them in her suite. However, the tenant says she will admit that she has left her own dog in the suite unattended a few times and it may bark if something is in the hallway. The tenant commented that "...all dogs bark..."

With respect to the dog feces in the hallway the tenant says it was not her who left the feces but Renee. The tenant says she was disgusted by this as well.

As to loud music the tenant says she does not own a television or sound system. She says the only time she played loud music was when Renee was in the building and the two danced in the living room at around 7 p.m. or so but not at 11 o'clock at night. The tenant says she did this once or twice in April or thereabouts.

The tenant says she did not think to bring receipts for doggy day care or other documentary evidence to prove that she takes her dogs to doggy day care as opposed to leaving them in her suite because she is from Quebec. The tenant says the laws are different there and she does not understand the process here in British Columbia such as the issue of providing documentary evidence.

With respect to the testimony of one of the witnesses the tenant submitted copies of itineraries and airline tickets which show that she was away from February 18, 2013 to February 25, 2013. The tenant says she arrived home on February 26, 2013 at 12:37 am. The tenant says that while she was away no one was in her suite.

The tenant questioned the witnesses with respect to their complaints about her dog. She noted that she asked one of the witnesses if her dog was bothering them and they replied that the dogs were not bothering them.

BR responded that since the tenant has been served with the Notice to End Tenancy the noise has stopped likely because she had been keeping the dogs elsewhere for the time being.

Analysis

In this matter I prefer the evidence of the landlord and his witnesses. I make this preference because their evidence is consistent. They all tell of noise, in particular, dogs barking which emanates from the tenant's suite.

By contrast the tenant tells several versions. While she agrees she keeps 1 dog and babysits others she says she takes the dogs to doggy daycare, then she says she takes them to her work and she says they sleep when they are in her suite. Finally she agrees she has left the dogs alone but states that they only bark when something is in the hallway. I am not sure how she would know when her dogs bark if she is not with them in the suite.

With respect to the times the tenant says the dogs were elsewhere she has not supplied documentary evidence of, for instance, doggy daycare receipts which might show that the dogs are clearly out of the suite when she is away. In this regard, she states that this lack of evidence is due to the fact that she is from Quebec where laws differ and she did not understand the need for documentary evidence in B.C. However this seems to be in contrast to her actions in that she did seem to know to supply documentary evidence of her being absent from the rental unit during certain periods of time.

Another contradiction occurs with respect to the allegations of loud music. At first the tenant says she does not play loud music as she does not own a television or sound system. Then she says the only time she played loud music was when Renee was in the building and the two danced on two occasions.

In addition to the contrasting versions of events, I found it telling that she believes that there is a difference between owning one dog and babysitting other dogs in her suite when her tenancy agreement stipulates that she is allowed to have one pet only. Whether she owns the additional dogs that stay in her suite or not her tenancy agreement states that she is to have one pet. With respect to the witness statements regarding the noise these dogs make I found her comment that "...dogs bark..." to be cavalier in terms of her attitude towards the other residents in the building. On a balance of probabilities I find it reasonable to assume that if her attitude is that "...dogs bark..." that her dogs likely bark and that she is either leaving them alone in her suite or she does little to stop the barking to ensure the comfort of her fellow tenants.

With respect to the issue of her documentary evidence showing her out of town on certain occasions when other tenants have reported noise from her suite I accept the landlord's explanation that it is likely that if the tenant is not in her suite, someone else is. I accept the landlord's explanation for the same reason I accept his explanation and that of his witnesses, because I have found their testimony overall to be consistent especially when compared to the tenant's testimony.

Overall, as set out above, I prefer the evidence of the landlord and his witnesses. I find that based on a balance of probabilities it is more likely than not that the tenant, or a

person permitted on the property by the tenant has significantly interfered with unreasonably disturbed another occupant or the landlord. The landlord therefore has cause to end this tenancy. The tenant's application seeking to cancel the Notice given for cause is therefore dismissed.

The landlord has requested an Order of Possession and the Act allows me to issue such an Order where I decline to allow a tenant's application seeking to cancel a Notice to End Tenancy. As the effective date of the end of this tenancy as set out in the Notice has passed, I will issue the landlord a 2 day Order of Possession. This is a final and binding Order enforceable as any Order of the Supreme Court of British Columbia.

The landlord must serve this Order on the tenant forthwith.

Conclusion

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: June 12, 2013

Residential Tenancy Branch

