



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with an application by the landlord for an early end of tenancy and an order of possession. The hearing was conducted by conference call. The landlord attended and was represented by his lawyer. The tenants called in and participated in the hearing. I heard the testimony of the landlord's witness, an occupant of the rental property.

Issue(s) to be Decided

Should the tenancy end early? Is the landlord entitled to an order for possession?

Background and Evidence

The rental property is a house in Vancouver. There are three suites in the house on three levels. The rental unit is the ground floor suite. The landlord lives in the uppermost suite, but shares kitchen facilities with M.G. who occupies the second floor suite. The tenancy began in 2006. On June 18, 2015 the landlord filed this application for dispute resolution seeking an early end of tenancy. The landlord also served the tenants with a one month Notice to End Tenancy for cause dated June 18, 2015. The tenants have applied to dispute the Notice to End Tenancy and a hearing of the tenants' application is scheduled to be heard on August 19, 2015. The tenants have also applied to dispute a rent increase and a Notice to End Tenancy for unpaid rent; this matter is set for hearing on September 4, 2015.

In the landlord's application for dispute resolution, he alleged that the tenant, M. V.D. has trespassed in his private space on several occasions. He said that she has intentionally opened the gate, allowing the landlord's dog to wander from the yard and he claimed that the tenant has harassed the occupant M.G. by taking pictures of him without permission.

The tenant submitted a voluminous binder of documents, transcripts of conversations, photographs and digital evidence said to have been submitted to rebut the landlord's allegations. The documents and evidence submitted by the landlord and by the tenants chronicled occurrences and disagreements dating back to 2008. Apart from some testimony to provide a historical perspective of the tenancy, the parties were asked to confine their evidence to recent events.

The landlord testified at the hearing that the tenant has disturbed and harassed the landlord and other occupants for a lengthy period of time with her constant complaints about noise. She has made frequent and repetitive phone calls, often hanging up and calling back numerous times. The landlord said that she regularly bangs on the ceiling of her suite, likely with a broom handle to communicate her displeasure about noise from ordinary activities of daily living, such as chopping vegetables, operating a blender, making popcorn, or playing music or watching TV, even at modest volumes.

The landlord testified that the tenant has intentionally opened the gate to the yard allowing the landlord's dog to escape from the rental property and putting the dog at risk of harm. He referred to incidents dating back several years. He noted in particular that he placed a combination lock on one of the two gates to the yard to prevent it from being left open, but the tenant removed the latch bar to prevent it from being locked. The landlord said that the tenant is constantly complaining about the dog's barking, although, according to him the dog is not a loud or frequent barker. The landlord said that he is fearful that the tenant may harm the dog. The landlord also testified that the tenant has adopted a practice of routinely recording conversations and filming or photographing the landlord and other occupants. He said that the tenant acts to provoke confrontations which she then records so as to create evidence to give the impression that the landlord is unreasonable.

The landlord and his witness, M.G. testified as to a specific incident that occurred on May 27, 2015. The landlord came home at approximately 11:00 in the evening. He walked the dog and then went to bed with the dog locked inside the house. He was later awakened by the tenant who was in his bedroom screaming at him that his dog was barking. The landlord was undressed in bed and unwilling to get out of bed in the tenant's presence. He asked her repeatedly to leave and when she refused he called the 911 operator and spoke to the police. When the tenant realized that the landlord was speaking to the police, she left the landlord's bedroom and returned to her rental unit. The landlord's witness testified that he came home at 1:00 A.M. with his partner and co-tenant, B.M. He let the dog outside to urinate; the dog encountered a raccoon and commenced to bark and pursue the raccoon. The witness quickly called the dog

and went into the yard to bring the dog back inside the house. The witness testified that some minutes later the dog barked again briefly and then went to sleep. The tenant came up and knocked on the kitchen door about 10 minutes later and demanded to speak to the landlord because the dog woke her up. The witness said that he told her several times that the landlord was asleep and he would pass on her complaint in the morning. He said that he explained to her about the incident with the raccoon. The witness said that the tenant was insistent that she see the landlord because she had been disturbed and she wanted him to be disturbed so that he would know what it feels like. The witness recounted an extensive dialogue with the tenant. He said that despite his objections she made her way upstairs into the landlord's bedroom and remained there for several minutes before she finally left without saying a word. Later the police attended and interviewed the parties. The landlord provided a copy of the police report with respect to the incident. It was noted in the police report that the tenant: "agreed it was wrong for her to enter the landlord's living area without his expressed consent."

I received a written statement from Ms. B.M. girlfriend of the witness, M.G. Although she was available to testify at the hearing I did not hear her evidence because there was insufficient time available and because counsel for the landlord acknowledged that her testimony would be largely corroborative of the testimony already presented.

At the hearing the tenant confirmed that she should not have entered the landlord's private bedroom to wake him up for the purpose of registering her complaint about his barking dog. She referred to the digital evidence, including audio recording and transcripts presented in support of her position that the noise from the landlord's dog is intolerable and about incidents of arguments and domestic disturbances between the witness and his girlfriend. She said that the complaints about noise and disturbance are not limited to the tenants; there are neighbours who have also complained about the landlord's barking dog. The tenant said she has recorded and photographed to document events in order to rebut the landlord's claims. She said that she has provided photographs to document the deteriorating condition of the rental property and the decay and lack of maintenance.

Apart from complaints of continued recording that the landlord and his witness consider as amounting to harassment and an invasion of privacy, I was not told of any serious disturbances caused by tenant since the events of May 28, 2015.

Analysis

Under section 56(2)(b) of the Act, in order to establish a claim for an early end to tenancy, the landlord must establish that “it would be *unreasonable, or unfair* to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47” (emphasis mine). I am not satisfied that the necessary unreasonableness or unfairness exists. The events complained of by the landlord may well amount to cause for ending the tenancy and I note that the landlord has served a one month Notice to End Tenancy for cause, but I am not satisfied that there has been a threat of sufficient magnitude to establish that the notice provisions of the *Act* should be circumvented; one circumstance that would justify bypassing the Notice requirements is where the tenant’s behaviour raises a concern of likely physical harm in the future; The landlord’s privacy was invaded, a serious matter, but on the facts, I find that it is not likely that the occurrence will be repeated. I have considered the fact of a police investigation, the tenant’s expression of regret, the absence of any charges and I find that the events that took place are not matters that would justify the use of the extraordinary remedy to ending the tenancy without notice and accordingly I dismiss the landlord’s application. The hearing on August 19, 2015 will determine whether or not there are grounds to end the tenancy for cause. The landlord will bear the cost of the filing fee for this application.

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 20, 2015

Residential Tenancy Branch

