



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding B.C. HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, MNDC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution made by the tenant to cancel a 1 Month Notice to End Tenancy for Cause, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for the landlord to comply with the Act, regulation or tenancy agreement.

All the parties attended the hearing including an agent for the landlord, the landlord's resident building manager and an advocate for the tenant. No issues of service of documents in relation to the *Residential Tenancy Act* were raised by any of the parties.

At the start of the hearing the tenant's advocate withdrew the portion of the application relating to a monetary order for damage or loss under the Act, regulation or tenancy agreement and for the landlord to comply with the Act, as the tenant wanted to focus on cancelling the notice to end tenancy.

All of the documentary evidence provided by the parties prior to this hearing as well as the affirmed verbal testimony during the hearing was carefully considered in this Decision.

Issue(s) to be Decided

Has the tenant established that the notice to end tenancy for cause ought to be cancelled?

Background and Evidence

Both parties agreed that the tenancy started on June 1, 2009 for a fixed length of five months which then went onto a month-to-month basis thereafter. The tenancy involves

a subsidised rental unit for which rent in the amount of \$304.00 is payable by the tenant on the first day of each month.

The landlord's agent testified that the tenant has engaged in a course of action that has led to staff members being threatened and verbally abused through the course of the tenancy. As a result, the tenant was personally issued with a 1 Month Notice to End Tenancy for Cause on June 6, 2013 with an effective vacancy date of July 31, 2013. The reason provided on the notice to end the tenancy was that the tenant or a person permitted on the property by the tenant has seriously jeopardised the health or safety or lawful right of another occupant or the landlord and the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord.

The landlord's agent testified that on May 31, 2013 the tenant caused the building manager to receive a threatening letter on a sticky note. The note was provided as evidence and reads "Overweight Faggot, If you dare too put your goofy fat ass Notices on my door you will always be surprised forever how stupid you where watch how you roll!!" The building manager who lives ten floors down from the tenant in the same building testified that the note was found near his door and as a result the police were called and a police reference number was provided as evidence.

The building manager completed an internal 'Accident/Critical Event' form relating to this incident which is routine for these types of incidents. This was provided as evidence and states that he had seen the tenant on video around his unit and had determined, through handwriting comparison, that the notice was from the tenant. The report goes on to say that whilst the note made no specific threat, given the tenant's history, it cannot be taken lightly. It then goes on to say that the tenant's behavior is too unpredictable and poses a danger to the building manager and other tenants. The building manager testified that he felt threatened by the note and it was taken as a serious threat that was criminal in nature which is the reason why police were called.

The landlord's agent also testified that the tenant had a history of violence as evidenced by another Accident/Critical Event report submitted as evidence which took place in 2010. The report alleges that the tenant took a few swings at two workers who had been changing the windows in his unit and then started swearing at them; eventually he had to be calmed down.

The landlord's agent testified that in another incident in February 2010, the tenant was issued with a formal breach letter for being uncontrollably angry, shouting and threatening the duty building manager and screaming whilst exiting the building. The

letter concludes that the fixed term tenancy will not be renewed. In an Accident/Critical Event report relating to the incident, the tenant is described as a safety threat to himself, staff and tenants.

The landlord's agent also testified that the tenant signed a 'Crime Free Housing' addendum to the written tenancy agreement which was provided as evidence. The document lists activities which the tenant is prohibited from engaging in, one of which is assault or threatened assault. The document explains that violations of these provisions shall be good cause for a notice to end tenancy.

In the tenant's testimony, he admitted to giving the note to the building manager stating that he was provoked into doing it as the building manager kept putting notices on his door. The tenant testified that he did not intend the note as a threat and denied all the allegations of him being verbally abusive towards the staff in the building.

In cross examination of the landlord by the tenant's advocate as to why the tenancy was renewed if the tenant was creating such a problem, the landlord's agent testified that due to a clerical error the tenancy was not terminated and therefore the tenancy automatically renewed on a month-to-month basis and they were required to honour it. The tenant's advocate also pointed out that only one formal breach letter in 2010 had been issued to the tenant and all the other incidents were only dealt with verbally with the tenant, allegations which the tenant denied. Furthermore, the tenant's advocate pointed out that although the police had been called in relation to the note issued by the tenant to the building manager, no charges had been laid by the police and the landlord's agent confirmed this. In closing remarks, the tenant's advocate concluded that the threats made by the tenant fell short of a credible threat.

The tenant testified that he had not done anything illegal and that he was the one being harassed by the landlord in relation to all the notices that were being issued to him including illegal entry into his unit by the landlord without issuing any legal notices.

Analysis

I have examined the notice to end tenancy and I find that it was issued to the tenant in the approved form with the correct content required under the *Residential Tenancy Act*.

In my analysis of the landlord's testimony, I have decided to focus on the part concerning the note issued by the tenant to the building manager. The building manager stated that he had seen the tenant on the building surveillance video placing the note in the vicinity of his residence in the same building. The tenant confirmed this in his

testimony, leaving me no doubt that it was written by him intending it to be seen by the building manager. The tenant testified that it was not intended as a credible threat. However, I do not feel what the tenant intended within the note is relevant here. What is relevant in this instance is how the building manager perceived the note. The building manager testified that he felt threatened by this note and this was the reason why he called police. In addition, the building manager documented in the Accident/Critical Event report that whilst no specific threat was made, the tenant's history gave him cause for alarm and in his opinion he posed a danger to him and other tenants. Based on this, I am satisfied that the landlord has demonstrated that the tenant had adversely affected the security of the building manager.

Having examined the note I find that it was derogatory and offensive in its nature and find that a threat does not need to be specific in its content for it to be a threat to the person receiving it. The building manager testified that the note was perceived to be a criminal threat and that's why the police were called. By writing this note, the landlord testified the tenant had committed a crime. As a result, I accept the landlord's testimony that the note threatened the life of the building manager as it stated "Watch how you roll!!". Therefore, I find that the landlord's agent and building manager have satisfied me that the tenant engaged in an illegal activity which affected the security of the landlord.

As the landlord has proved the notice to end tenancy and made a verbal request for an order of possession during the hearing under section 55(1) (a) of the *Act*, I find that the landlord is entitled to an order of possession.

Conclusion

For the reasons set out above, I dismiss the tenant's application and I hereby grant an order of possession in favour of the landlord effective July 31, 2013 at 1:00 p.m. This order is final and binding and may be enforced.

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 17, 2013

Residential Tenancy Branch