



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      CNC FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 1 Month Notice to End Tenancy For Cause, pursuant to section 47
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present affirmed evidence and to make submissions. All evidence on file was acknowledged as being received by both parties.

The tenant's application was filed within the time period required under the Act.

### Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to all of the documentary evidence and the testimony of the parties, only the relevant details of their respective submissions and arguments are reproduced here.

The tenancy for this apartment unit began on October 15, 1998. The landlord served the tenant with the 1 Month Notice on October 31, 2016 on the grounds that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord argues the 1 Month Notice should be upheld on the grounds that the tenant has a long history of being verbally abusive and during an incident on October 30, 2016, the tenant threatened the safety of the property manager leaving staff feeling threatened on the job.

On behalf of the landlord, the property manager Mr. W. testified as follows:

- On October 30, 2016 he witnessed the tenant working on his vehicle in the underground parkade.
- He introduced himself to the tenant as the property manager. He became the property manager in June 2016 and had not previously met the tenant.
- He advised that tenant that he is not permitted to work on his vehicle in the parkade and that his name was on a list of tenants with cars that are uninsured and leaking fluids.
- The tenant became angry, belligerent and disrespectful and started to call him derogatory names.
- The tenant then asked him "you know who the HA is"?
- He asked the tenant if he was threatening him to which the tenant responded "you should just watch your back".
- The tenant further threatened him that he could risk losing his job as the property manager.
- His wife was in the vehicle and heard the entire conversation and submitted a witness statement.
- The incident left him feeling verbally abused and threatened.
- The following day, he contacted the police and filed a report of the incident.
- A copy of the police report was submitted.
- After the police spoke to the tenant in regards to the complaint filed against him, the tenant contacted the previous property manager and filed a complaint against the property manager stating he was the one that was threatened.
- There is nothing in the police report about an alleged threat from the property manager towards the tenant.
- He did threaten the tenant with eviction as a result of the threat from the tenant.

On cross-examination, Mr. W. testified as follows:

- There was not any physical assault during the incident but he felt physically threatened as a result of the tenant's comments and aggressive body language.
- He did not specifically mention the "HA" comment in the police report but did report a threat.
- There are video cameras in the parkade but none in the location of the incident.
- His wife did record a portion of the incident but he was not able to recover the recording.

The tenants advocate argues the 1 Month Notice should be cancelled as the tenant has lived in the rental complex for 19 years with no formal breach letters on file. There was no physical contact or threat during the incident in question and the landlord has not met its burden of proof to establish cause to end the tenancy. The tenant's advocate argues the landlord did not provide any corroborating evidence for the alleged threat.

The tenant testified as follows:

- He was in the parkade working on his vehicle when Mr. W. approached him and started verbally harassing him about working on his vehicle.
- Mr. W became very agitated and an argument ensued over vehicle insurance, storage and leaking fluids.
- He laughed at Mr. W. and said "HA" as in "laugh at you". He continued to laugh at Mr. W.
- Mr. W. threatened him by stating that his brother-in-law is HA.
- He immediately called the former property manager and reported the incident as he feared for his safety.
- The following morning he also sent some text messages to the former property manager in regards to the threat.
- He has lived in the complex for approximately 19 years and has not received any formal breach letter.
- He has a good relationship with other tenants.

### Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

For the reasons that follow, I prefer the testimony and evidence provided by the landlord over that of the tenant. Mr. W. filed a police report of the incident and the report supports his testimony that a threat was made by the tenant towards him. Although the report doesn't specifically reference a comment regarding the "HA", it does report a threat. The police report makes no reference to any threat from Mr. W. towards the tenant as alleged by the tenant. As per the report, it appears the responding constable spoke with the tenant and the only reference to a threat from Mr. W. towards the tenant is a threat of eviction. Further, the phone call log and text message evidence submitted by the landlord supports the landlord's argument that the tenant did not report a threat until after the police spoke to him. The tenant first called the former property manager immediately following the incident but this phone log only states Mr. W. threatened him in the parking lot. It does not specify if this was a threat of violence or threat of eviction. It's not until the text message sent to the former property manager on the following day, in which the tenant makes reference to a threat of violence in addition to a threat of eviction. I find that on a balance of probabilities, in using the term "HA", the tenant was referring to the Hells Angels, a well-known organized crime syndicate versus just having a laugh at Mr. W.

I find that the landlord has provided sufficient evidence to justify that it had cause to issue the 1 Month Notice. By uttering threats against the property manager, the tenant has seriously jeopardized the safety or lawful right of the landlord.

The tenant's application to cancel the 1 Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: February 15, 2017

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Residential Tenancy Branch