



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MORE THAN A ROOF HOUSING and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNE, LRE, LAT
OPC

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution, filed on July 2, 2021, the Tenant requested an Order canceling a 1 Month Notice to End Tenancy for Cause, issued on June 30, 2021 (the "Notice"), an Order limiting the Landlord's right to enter the rental unit and authority to change the locks on the rental unit. In the Landlord's Application for Dispute Resolution, filed on August 11, 2021, the Landlord requested an Order of Possession based on the Notice.

The hearing of the parties' Applications was conducted by teleconference at 9:30 a.m. on October 29, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant called in on his own behalf. The Landlord was represented by G.P. the Operations Manager, K.M. the Senior Manager, and N.F. the Community Support Worker.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the

evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Relief Sought

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure*. At all times an Arbitrator is guided by *Rule 1.1* which provides that Arbitrators must ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants. *Rule 2.3* provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims. It is my determination that the priority claim before me is the validity of the Notice. I therefore only addressed the Tenant's request for an order canceling the Notice and the Landlord's request for an Order of Possession.

For reasons which will be detailed further in this my Decision, the Tenant's request for an Order that the Landlord's right to enter the rental unit be restricted as well as the Tenant's request for an Order permitting him to change the locks on the rental unit are dismissed without leave to reapply.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession?

Background and Evidence

Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution first, the Landlord presented their evidence first in the hearing before me.

The Operations Manager, G.P., testified as follows. He stated that this tenancy agreement was signed September 15, 2008 and the tenancy began on October 1, 2008. The Tenant currently pays \$356.00 per month in rent. The rental unit is a single room occupancy unit in a subsidized housing provided by B.C. Housing.

The Landlord sought to end the tenancy on the basis that the Tenant has been aggressive and threatening with staff. G.P. stated that the first aggressive incident was on June 12, 2020. Another incident followed later in 2020. G.P. confirmed that the most recent concerns began on June 28, 2021 and gave rise to the issuance of the subject Notice. The reasons set forth on the Notice were indicated as follows:

The Tenant, or a person permitted on the property by the Tenant has:

- significantly interfered with or unreasonable disturbed another occupant or the landlord; and,
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord provided the following additional details on a letter which was provided to the Tenant when he was served with the Notice:

- “There was an incident on Monday, June 28th in which water was found in the hallway outside your door. Staff knocked on your door and called out to see if you were ok. You did not respond, so the police were called to do a wellness check. When the police arrived, you were aggressive and hostile. Later in the afternoon you phoned two staff members and were confrontational and inappropriate with both of them. You swore repeatedly, raised your voice, and even threatened [N.] with harm...”

G.P. testified that there have been three separate incidents in which the Tenant has been aggressive; two in 2020 and one most recently in June of 2021. In terms of the June 12, 2020 incident, the staff attended the rental unit as there was water pooling in front of the Tenant’s unit. The staff went to check on the Tenant and they heard a lot of shouting and they called the police. The Tenant was very upset the police had been called and at that time the Tenant threatened the police. The second incident occurred later in 2020 and was relating to the Tenant’s use of the gym at the rental building. The Tenant was aggressive to another tenant who was trying to clean the gym. He locked her out of the gym.

G.P. stated that the most significant issue related to the June 28, 2021 incident detailed above. The community support worker, N.F., also provided testimony regarding this incident as follows. N.F. stated that he, and R.F., the building manager, received a call from another tenant on the 5th floor as a result of a large pool of water in front of the subject rental unit. They went to the Tenant's unit, knocked on the door, called out the Tenant's name and he did not answer. N.F. was concerned about the Tenant's safety and called the police for wellness check. N.F. stated that three police officers arrived shortly thereafter. As soon as they announced their presence, the Tenant opened the door. He was upset that N.F. had called the police. The Tenant kept cutting off the staff as they were speaking, and the police tried to help and then the Tenant directed his anger towards the police. N.F. stated that the police were very calm and professional and were able to calm the Tenant down.

N.F. stated that the Tenant then called him on the phone. The Tenant was very upset that N.F. had called the police and wanted to know who had "snitched on him"/notified the Landlord. He said that he was fine, and they had no reason to call the police. N.F. described the Tenant as aggressive and stated that the Tenant would not let N.F. finish his sentences.

The Landlord provided an audio recording of this telephone conversation which confirmed N.F.'s testimony. In this conversation, the Tenant questioned N.F. as to who "snitched on him" and why the Landlord called the police over a puddle of water. The Tenant also asked whether it was reasonable for the Landlord to proceed in such a manner and whether the matter should be in court. The Tenant stated that it was a waste of public resources to call the police. At all times during the call N.F. was very calm and attempting to respond to the Tenant's questions and concerns. N.F. had difficulty finishing his sentences as the Tenant kept interrupting. N.F. repeatedly asked the Tenant if there was anything he could do to help the Tenant and the Tenant refused to answer his question. Near the end of the conversation, the Tenant told N.F. that if it happened again he would "come back with a lot, a lot, a lot of vengeance". When N.F. asked the Tenant directly if that was a threat, the Tenant said "are you going to take me to court for what I said? I didn't say I was going to kill anybody. I won't do that myself. Those dirty jobs I won't do my self. Somebody else is going to do that for me." N.F. told the Tenant he was trying to help him. In response the Tenant said "thank you for listening" and hung up.

N.F. stated that he understood the Tenant's comments to mean that the Tenant was going to hurt him and that he was not going to do so directly, but that he would have

someone else do so. N.F. stated that the Tenant has been aggressive in the past with other staff and other police, but this is the first time that the Tenant has threatened him.

The Landlord also provided a recording of a phone message left by the Tenant. In this recording the Tenant is at times incoherent and sounds as if he is speaking a different language, or purposely speaking gibberish. Although much is incoherent, he is clearly heard saying: "You don't have the guts to answer my phone now. Huh? You are a little f**king worm." And "You little sh*t".

N.F. stated that the Tenant also went to the office door and was banging on the door while R.F. was in the office alone. She was so frightened that she called her husband to walk her home. R.F. also provided a statement in evidence detailing her concerns and the impact of the Tenant's behaviour on her work.

In response to the Landlord's evidence and concerns the Tenant testified as follows. The Tenant denied threatening N.F. He said that he did not say that anyone else would harm N.F. but that he believes in a higher power. The Tenant testified that his words to N.F. were "if you are going to continue to create bad karma, you are going to be hurt, that is not because of me, that's because of a higher force that I believe in". The Tenant stated that he did not mean this to be a threat but only to inform N.F. that he believed that there were consequences to his actions.

Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Residential Tenancy Act*. In this case the Landlord sought to end the tenancy for cause on the basis of the Tenant's aggressive and threatening behaviour on June 28, 2021.

Based on the evidence before me, I am satisfied this tenancy should end for the reasons set forth on the Notice. I find, based on the testimony of N.F., and the audio recordings provided in evidence before me, that the Tenant threatened the Landlord's staff member, N.F., with bodily harm; in doing so, I find the Tenant significantly interfered with or unreasonably disturbed the Landlord's employees, and seriously jeopardized N.F.'s safety.

I do not accept the Tenant's testimony that he was speaking of a higher power or karma, as his words are clear in the audio recordings submitted in evidence by the Landlord. The Tenant's version of events is simply not supported by the evidence.

Rather, the Tenant clearly stated that killing someone was a “dirty job” and that he would not do so, but that someone else would on his behalf. On balance, I find this to be a direct threat to harm N.F. Understandably, N.F. felt threatened by the Tenant and is concerned for his safety. I also accept the Landlord’s submissions that other staff members are concerned about the Tenant based on his telephone messages, and the fact he pounded on the door while one staff member was alone in the office.

Threats of physical harm against others cannot be tolerated in a tenancy and this tenancy must end for the reasons set forth in the Notice. As such the Tenant’s claim is dismissed in its entirety. The Landlord is entitled to an Order of Possession for cause.

Conclusion

The Tenant’s request for an Order canceling the Notice is dismissed. The tenancy shall end in accordance with the Notice.

As the tenancy is ending, the Tenant’s request for an Order restricting the Landlord’s right to enter the rental unit, as well as the Tenant’s request for authority to change the locks to the rental unit is dismissed without leave to reapply.

The Landlord’s request for an Order of Possession based on the Notice is granted. The Landlord is granted an Order of Possession which shall be effective two days after service on the Tenant.

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: November 2, 2021

Residential Tenancy Branch