



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FERNIE FAMILY HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on June 17, 2021, wherein the Tenant requested an Order canceling a 1 Month Notice to End Tenancy for Cause issued on June 9, 2021 (the "Notice").

The hearing of the Tenant's Application was scheduled for 9:30 a.m. on October 21, 2021. The Tenant called into the hearing as did the Landlord's General Manager, S.S. Both parties were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

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.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—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 and is the Applicant, the Landlord presented their evidence first.

The General Manager testified as follows. She confirmed this tenancy began June 20, 2017. The General Manager confirmed the Tenant lives in the rental unit with his son.

The Landlord sought to end this tenancy for cause and issued the Notice on June 9, 2021; the reasons set forth in the Notice are as follows:

- The tenant, or a person permitted on the property by the Tenant, has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord, and,
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The Landlord provided further details on the Notice as follows:

Tenant has on 3 occasions been aggressive and has used profanity excessively towards the landlord and other staff. This has come to the point that the landlord is wary of having the tenant in the office. Tenant has also bothered other tenants by yelling and using profanity to tell them where to park.
Tenant has not given proof that his son is still living with him 40% of the time to qualify for the unit and subsidy.

The General Manager confirmed that she is the “Landlord” referred to in the Notice.

Of note, the Landlord issued a Notice to End Tenancy pursuant to section 47 of the *Act* which allows a Landlord to end a tenancy for cause. A Landlord may end a tenancy pursuant to section 49.1 of the *Act*, which applies when the Landlord believes the Tenant no longer qualifies for subsidized housing; however, in this case, the Notice

related to allegations of cause; therefore, I did not hear evidence from the Landlord with respect to whether or not the Tenant qualified for housing.

In terms of the dates the allegations contained on the Notice with respect to the “three occasions” the General Manager testified as follows.

She stated that on May 3, 2021 the Tenant came to pay his rent as well as to inform the Landlord that there was mould in his unit and that he could hear water dripping in the wall. At that time, he also stated that he told her about it two years prior and she stated that she could not remember. She admitted during the hearing that it was her mistake to fail to write it down in the log book as they had no record of the Tenant informing them of this issue. She informed the Tenant that they did not have the money to rip apart the walls. In response the Tenant began yelling and swearing at her: he told her that she never does anything and called her a “f**ing lazy b**ch” as he was going down the ramp.

In response to the information provided by the Tenant the General Manager then brought in a building inspector to inspect the entire building. The second occasion relates to this inspection, which occurred on May 13, 2021. On that date, the building inspector, the General Manager and the Maintenance Supervisor arrived to inspect the Tenant’s unit as well as the other units in the building. The General Manager was informed that no one else could be in the unit when the inspector was there because of Covid-19; as a result, the General Manager then informed the Tenant that he was not to be in the unit. When the inspector went into the unit, the Tenant wanted to show the inspector where the water sound was originating. The General Manager again informed the Tenant that he could not be in the unit. The Tenant started yelling at the General Manager and telling her that she never did anything and wouldn’t let him rip open the wall. The Tenant then called her a “f**ing lazy b**h” and took three steps towards her. The Maintenance Supervisor stepped in front of the General Manager and told the Tenant that he was not to speak to the General Manager like that. The General Manager further stated that the Tenant then walked away for a small period of time and continued to yell at them. He then asked to speak directly to the Inspector, but the Inspector would not speak to him because of the way he had been speaking to her.

The General Manager stated that the Inspector did not find any evidence of leaking, which he told her would be evidenced in the crawl space as water always takes the path of least resistance.

The third and final occasion occurred on June 4, 2021. On this date the Tenant had come to the rental office to pay his rent. The General Manager told him that she did not feel safe with him in the office because of how he had treated her and that she had reported his behaviour to the RCMP at the insistence of the Board of Directors. The General Manager asked him to leave and he refused to do so until he received a receipt. She offered to provide him a receipt at a later time. The Tenant apologized for his behaviour on the day of the inspection, and reminded her that he had also apologized on May 13, 2021. He asked her for the opportunity to talk it out. She again asked him to leave and he then told her to be an adult and not a "f**ing child". He then left the office and called her a "f**ing b**h".

The Landlord issued the Notice on June 17, 2021. The General Manager confirmed there have been no issues since that date as the Tenant now goes to the Assistant Manager's office to pay his rent and the Assistant Manager has not had any issues with the Tenant.

The General Manager stated that she feels that he is behaving appropriately only because he knew the hearing was coming up.

In response the Tenant testified as follows.

The Tenant disputed the General Manager's version of events, although he admitted that on May 3, 2021 he called the General Manager an obscenity. He stated that he did so at the time to draw attention to the situation of the water leak and mould, because he wanted others to hear him so that they knew she wasn't doing anything about it.

In terms of May 13, 2021, the Tenant further admitted that he swore out of frustration because she would not fix the water leak and claimed the Landlord would not address this because of finances. The Tenant stated that he wanted to go into his unit to turn on the shower because the leak is below the bathroom and is only apparent when the shower is on. The Tenant said that all that he wanted to do was turn the tap on so they could hear it dripping from a different area. The Tenant stated that he did not swear *at* her, rather he said "what's the f**ing cost of mine and [my son's] life"? when she stated they would not repair the damage for financial reasons. He confirmed that he has been in construction for 40+ years and knows the impact of mould.

The Tenant also testified that on that date he immediately apologized to the General Manager as he knew his comments were inappropriate and told her that he was sorry for what he said and that he was just so frustrated.

In terms of the June 2021 incident when he tried to pay his rent at the office, the Tenant denied he used any derogatory terms. He said he was mystified she told him that she had reported him to the police. He said he used to visit with her, take her cookies and listen to her when she needed to get things off her chest and that they had a good relationship. He further stated that he thought they had mutual respect and he still respects her knowing that she has a hard job, and she does a good job. He also stated that he left the office knowing that he could deal with the Assistant Manager, D. with whom he has a great relationship.

He also noted that when it was first leaking, he offered for her to come to the rental unit to hear it and she said she believed him.

The Tenant also stated that the leak is still ongoing and has gotten worse. He also stated that he was unaware of the procedure to obtain an Order that the Landlord make repairs to the rental unit.

Analysis

Ending a tenancy is a significant request and may only be done in accordance with the *Act*. In this case the Landlord sought to end the tenancy for cause for the following stated reasons:

- The tenant, or a person permitted on the property by the Tenant, has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord, and,
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

As noted previously, the circumstances giving rise to the Notice relate to allegations that the Tenant was aggressive with the General Manager and called her derogatory names. While the Tenant downplayed the potential impact of his words and actions on the General Manager, the Tenant admitted that he called the General Manager a derogatory name and said he did so out of frustration.

The General Manager stated that during the inspection of his suite the Tenant apologized for his language. She also confirmed that he apologized again when he came to pay his rent in June.

The Tenant stated that he wanted to run the water at the same time the Building Inspector was in his unit as the sound of water leaking is not apparent in the bathroom, but in another part of the unit. Due to social distancing requirements necessitated by Covid-19, the Tenant was not permitted in the unit. It is possible that had the Tenant been able to run the water during the inspection, that those in attendance would have heard what the Tenant says he has heard for years. Understandably the Tenant was worried that the inspection would not be thorough if he was not permitted to participate, however it seems he failed to communicate effectively with those in attendance and reacted poorly when he was reminded he could not be in his unit.

I accept the Tenant's testimony that he has heard water leaking for some time and brought his concerns to the Landlord's attention in prior years. I also accept his testimony that he was very frustrated when the General Manager told him they could not start ripping apart walls due to financial constraints. Due to his experience in the construction industry, the Tenant was aware of the health risks posed by moisture and mould. While his actions and language were inappropriate, I am satisfied he acted out of frustration, not malice. He stated during the hearing that he had a good relationship with the General Manager prior to the three incidents detailed previously, that they used to visit with one another when he paid his rent, and that at times he acted as a sounding board to her. This was not disputed by the General Manager. He also stated that he knew she had a hard job to do and that he respected her. I am satisfied those stated sentiments were genuine.

The question before me is whether the tenancy should end. While the Tenant's actions and words were inappropriate, I find these incidents to be relatively isolated when considering the tenancy as a whole. The evidence confirms that there have been no repeat occurrences since June, and that the Tenant has been dealing with another staff member, not the General Manager. Most importantly, I am satisfied the Tenant is remorseful, appreciates the negative impact his actions and words have had on the General Manager, and knows that he cannot speak to her in derogatory ways. I am hopeful that in time, he will prove to the General Manager that she can trust him again, and that their positive relationship can resume.

In all the circumstances, I am not satisfied these incidents necessitate the ending of this tenancy as I am confident the Tenant is committed to engaging with the General Manager in a respectful manner. Should there be any further similar incidents, the Tenant is cautioned that his tenancy will likely end for cause.

The Tenant is also reminded that there is a process available for him to obtain an Order for the Landlord to make necessary repairs to the rental unit should he feel the Landlord is not honouring their obligations pursuant to the *Act*.

Conclusion

The Tenant's request for an Order canceling the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

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 1, 2021

Residential Tenancy Branch