



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNR, CNC, FFT

### **Introduction**

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;
- cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing. The landlord attended the hearing with counsel. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord's counsel confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. Counsel stated, and the tenant confirmed, that the landlord served the tenant with their evidence package. The landlord's Canada Post tracking number is reproduced on the cover of this decision. I find that all parties have been served with the required documents in accordance with the Act.

At the outset, I advised the parties of rule 6.11 of the Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The parties confirmed that they were not recording the hearing.

I also advised the parties that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

I note s. 55 of the *Act* requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession, and/ or a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### **Preliminary Issue: Cancellation of the 10 Day Notice**

The landlord did not issue a 10 Day Notice for Unpaid Rent. Pursuant to rule 4.2, I have amended the application to remove the CNR code from the tenant's application.

### **Issues to be Decided**

Are the tenants entitled to:

- 1) an order cancelling the One Month Notice;
- 2) recover the filing fee?

If the tenants fail in their application, is the landlord entitled to:

- 1) an order of possession?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written fixed term tenancy agreement starting May 1, 2014. Monthly rent is \$745.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$372.50 and a pet damage deposit of \$372.50. The landlord still retains this deposit.

On December 24, 2021, the landlord served the tenant with a One-Month Notice to End Tenancy for Cause by posting it to the tenant's door.

The Notice gives the following grounds for ending the tenancy:

- The tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord.
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
  - Put the landlord's property at significant risk.

The Notice provided additional details for the causes leading to its issuance:

[The tenant] has repeatedly threatened me ever since taking ownership of the building in May 2021. He has suggested he is an affiliate of the Hells Angels organization and that he can find my personal residence. The most recent threat to personal safety and to buildings property

came on December 8<sup>th</sup> when he called me at 6:22 pm. He told me not to “fuck with him or his club” and that the “wrath of 81 right down your ass” and threatened to rip the parking garage gate off the building if he didn’t receive a remote clicker. Police report filed shortly thereafter.

Police file number: XXXX-XXXXXX

The tenant testified that he has lived in the building for fourteen (14) years. During his time as a resident, he has always paid his rent on time, has assisted with the elderly people in the building, and has helped with upkeep such as cleaning the entrance to the building. He helps out around the building as much as possible because there has not been a resident manager for a very long time, and this is his and his roommate’s home.

The tenant does not deny the phone call made to the landlord. He states, “I got mad and called [the landlord] a couple of times.” He explained that the rant was from frustration: there was construction on the premises that was noisy and messy; he had been asking for underground parking for the last twelve years but was never provided a spot. Now, construction workers were given underground parking and he has to park on the street – the landlord was neither listening to nor responding to his concerns. He parks in the open and his brand new 2022 truck has been vandalized on several occasions, including a broken windshield. Likewise, his van’s front windshield has also been smashed. The tenant states that the tenancy agreement included parking. He has no parking spot, is forced to park on the street, and his truck keeps getting vandalized.

The tenant stated that he spoke with the police, who contacted him to talk about the phone call. The tenant was told that no charges had been laid.

The tenant stated that he and his roommate are looking to move in the spring. His roommate is 77 years old and in failing health. The tenant is 67. He has been working with a support team to secure new accommodations through BC Housing or other funded housing options. The tenant asked if it was possible to negotiate an end of tenancy in the spring. The landlord declined.

The landlord’s counsel made submissions on behalf of the landlord. Counsel states the landlord has been “repeatedly threatened” and as evidence provided the landlord’s “airtime details” that logged a 31-minute conversation between the tenant and landlord dated June 25, 2021, and an audio recording of the conversation of December 8 that resulted in the One Month Notice for Cause. The audio was submitted into evidence and referenced multiple times during the hearing. Counsel emphasized throughout the hearing that the landlord is “very concerned for his safety” and that the tenant is “extremely aggressive” and in the phone call of December 8, told the landlord he was an “affiliate with Hells Angels”.

Counsel read into evidence the following time codes in the 12 minute 27 second audio recording of December 8, although she did not submit the written transcript associated with these specific times into evidence.

**1:10:** *"I'm not fuckin' around with you, son, anymore. "I'm not fuckin' around..."*

**3:27:** *"Don't fuck with me. Don't fuck with my club."*

**4:25:** *"I've gone into about fuckin' 8 suites watchin' these kids." LL: "So you are entering other units? Why are you entering other units? Why.... TT: Brought them a case of beer – these are kids- 2 kids and helped them move something out and they're removing hot water tanks. I'll go in there if I fuckin' want- it's my right to do that if I think there's [unintelligible]. The doors are wide open."*

**5:35:** *"I'm just sayin' – watch what you're doin – right? – like you've got some fuckin idiot out here – like when I did asbestos abatement, they had everything taped off, the garage and everything – these guys slide a fuckin' little plastic door up and start removing everything – the fuck man- I've got it all on video, man."*

**6:04:** *"If you fuckin' piss me off any more you will have the wrath of 81 come right down your ass - I don't care right? Do you know who the fuck I am? and who my club is? and everything else? We own a lot of shit [X], a lot. And I'm not kidding you."*

**7:10:** *"Don't think you're gonna fuck with me or fuck with the people I associate with or my business, right? An you check me out – you check my face page, you check my tiktok, you can check everything out about me – you'll know I'm not fuckin' with you guys."*

**8:48"** *Get me a fob or I'm gonna rip that fuckin' gate right off the fuckin' building."*

**10:59** *"You should seriously go to Face Book and check out who the fuck I am – now this is crazy – I'm just trying to help you out."*

**11:37:** *"You check me out – I don't give a flying fuck what you do – if I'm threatening you or you record it because I'm recording you right now. I just want a fob so my fuckin' trucks aren't getting fucked up every time I park here."*

By way of background, counsel explained that the landlord purchased the property in May 2021 and is the sole director. She stated that the landlord is "doing the best he can" to address the tenant's concerns but because of the pandemic there are supply issues. The landlord has been trying to get a FOB for the tenant so that he can park underground.

### **Analysis**

No transcript of the audio recording was submitted into evidence. I listened to the audio recording three times in order to better understand the context of the audio clips selected and read into evidence by the counsel. I transcribed the conversation prior to the threat to gain an understanding of the circumstances that may have resulted in the threats.

TT: "All's I ever want was a fob so I [unintelligible] second windshield that's busted – you know – not your guys but you know throwing shit out into the dumpster and hitting my windshield and you'll get a bill for my fuckin' times twice – times two."

LL: "Sorry, for what?"

TT: "For my windshield – I've got nowhere to park, the parking lots vacant but your contractor's guys they're parking inside, taking wood, taking bathtubs and loading other fuckin' trucks. All's I want when I come here is a place to park underground. And I've waited twelve years for this – still don't have it."

**1:10:** *"I'm not fuckin' around with you, son, anymore. 'I'm not fuckin' around..."*

TT: .... I understand you're a new owner and blah blah blah, but you know what, you don't get this. For twelve years, never had blinds moved from 109 to 207, we were promised the carpets cleaned and nothing's ever been done.

LL: Right, Ad I'm sorry but I can't speak to that because I just took over in May.

TT: And I know you did BUT according to these fuckin' little rat bitches' downstairs, I can go to the RTB, but I don't want that – it's never happened and never will in this fuckin' place- I guarantee that. My main concern is Tom and that's it – that's it – and I will get him out of here as soon as I can. I'm pretty sure {A}, being honest he's going to die, right? – in the next two months – so tell your --- people- like that [M] and stuff like that – you know- I'll try to take care of them as much as I can but they don't understand....but I'm just so infuriated right now – I'm going to go nuts B E C A U S E N O T H I N G G E T S D O N E.....

**3:27:** *"Don't fuck with me. Don't fuck with my club."*

**5:35:** *"I'm just sayin' – watch what you're doin – right? – like you've got some fuckin idiot out here – like when I did asbestos abatement, they had everything taped off, the garage and everything – these guys slide a fuckin' little plastic door up and start removing everything – the fuck man- I've got it all on video, man."*

TT: You have a little asbestos door? It cost me \$1500 last year, right? When there was a little flood – and put [S] downstairs below us in the Best Western and you better listen to this...and check it out, right? You don't have kids coming in here and ripping out of [unintelligible] and you need licenses to do this right – I've done this fuckin' 42 years of my life – this is crazy – I'm not sayin' anything – I'm just sayin' watch what you're doin', right? Like you've got some fuckin' idiot out here and when I did asbestos abatement, they had everything taped off, the garage and everything – these guys slide a fuckin' little plastic doo up and start removing everything? The fuck? I've got it all on video man.

**6:04:** *"You guys start' pissing me off any more you will have the wrath of 81 come right down your ass - I don't care right? Do you know who the fuck I am? and who my club is? and everything else? We own a lot of shit [X], a lot. And I'm not kidding you."*

TT: I come here every fuckin' day to check on Tom. Every time I come here there's garbage everywhere. I've got no place to even fuckin' park and I'm a licensed fuckin' tenant here – never been late with rent – ever- never had anything ever done in this place here – ever- is not your fault by any means but fuck, 12 years without blinds – right? And carpets need to be cleaned – it goes on and on – just want to make sure Tom's being taken care of until I can get him the fuck out of here.

**7:10:** *"Don't think you're gonna fuck with me or fuck with the people I associate with or my business, right? An you check me out – you check my face page, you check my tiktok, you can check everything out about me – you'll know I'm not fuckin' with you guys."*

TT: [A] listen to me – you have no parking signs, you have no [permits?]. Your fuckin' contractor comes in and puts a bunch of dumpsters in – there's me and [unintelligible] I just pulled in now, that's the only two parking spots we've got – come on – there's like fuckin' 30 units here – we can't even get a fucking

....can't even get into the underground -like this is crazy....crazy and my trucks get fucked up again – 2 of them – my van AND my new truck – both with broken windshields – so here's the deal – get it fixed –  
**8:48** "Get me a fob or I'm gonna rip that fuckin' gate right off the fuckin' building."

TT: I'll tell you what – I'll go downtown and get a fuckin' fob and get them to program it – what's that place called?

**10:59** "You should seriously go to Face Book and check out who the fuck I am – now this is crazy – I'm just trying to help you out."

**11:37**: "You check me out – I don't give a flying fuck what you do – if I'm threatening you or you record it because I'm recording you right now."

TT: I just want a fob so my fuckin' trucks aren't getting fucked up every time I park here. What's so hard to understand about that?

Counsel stated that the landlord has been "repeatedly" threatened by the tenant and the tenant was "extremely aggressive". The only evidence provided was the sole audio recording of a phone call of December 8, 2021. Although there was an earlier call between the landlord and tenant referenced, only "airtime details" showing a 31 minute conversation between the tenant and landlord took place on June 25 was provided as evidence; there is insufficient information about what was discussed. No evidence of verbal or physical threats or of aggressive behavior, extreme or otherwise, were provided, for example, between a phone call that took place on June 25 and the December 8 phone call.

With respect to entering "people's suites", it appears that the suites the tenant went into were under renovation, the doors were open, and he engaged in conversations with the workers, brought them beer, and helped them move something out of one of the units. The landlord testified that he has never received any complaints from any of the other tenants about this tenant.

I assign little persuasive weight to counsel's submission that the landlord was "very concerned for his safety". I note the landlord issued the One Month Notice for Cause some 16 days after the incident. If the landlord was sufficiently concerned about his safety, the landlord had the option to file an application for an expedited hearing, reserved for serious matters, and request "an order for early termination of a tenancy pursuant to section 56". He did not do so. In the alternative, the landlord could have served the One Month Notice within a few days of the incident. He did not do so.

It appears the landlord was sufficiently concerned about the December 8, 2021, phone call to contact the police and create a police file. Although the police file number was entered into evidence, the content of the file was not provided, neither was the date and time of police contact provided. There is a vague reference in the One Month Notice that reads, "Police report filed shortly thereafter".

The tenant testified that the police called and spoke with him about the incident and told him that charges would not be laid. Counsel was quick to point out that the tenant had no evidence to support that information but offered no evidence to the contrary. The

absence of evidence is evidence. I would have expected counsel to provide a copy of the police file if the information contained in that file provided the evidentiary basis to prove that the Notice was validly issued. I accept as fact the tenant's testimony that the police told him that no charges would be laid.

I assign little persuasive weight to counsel's submission that the tenant repeatedly "threatened" the landlord, unless counsel was referring to the one recorded phone message submitted into evidence. After listening to the recording three times, the evidence suggests, yes, threats were interspersed throughout that one conversation and the phone call appeared to be a one-time event, borne more out of frustration, as shown in the above reference transcript, rather than an intention to physically harm the landlord. There was insufficient evidence provided about the subject of the June 25, 2021 phone call.

I assign no persuasive weight to allegation that the tenant put the landlord's property at significant risk. The landlord provided no examples of the tenant damaging the property. If anything, the concerns the tenant raised about the removal of hot water tanks and the potential water damage that could result if not done correctly suggests a concern for the landlord's property. Similarly, the tenant alerted the landlord to significant concerns about potentially improper asbestos abatement procedures, that may be contrary to WorkSafeBC's Occupational Health and Safety Regulations – and could put the tenants and the workers' health and safety at significant risk. I also want to point out, it appears it was the tenant's property, not the landlord's property, that was at "significant risk", two damaged windshields, and his vandalized truck, which gave rise both to the phone call and to the rant and threats.

Although the tenant did threaten to, "*[...] rip that fuckin' gate right off the fuckin' building*", there was no evidence that the tenant followed through with that threat or intended to. Rather, the rant was rooted in a long-standing dispute over parking spots that are included in the rent but not provided. In the phone call, the tenant pointed out that outdoor parking for 30 units was reduced to two (2) spots because the contractor put dumpsters on site forcing the tenant to use street parking and despite multiple requests for a fob still had no access to underground parking.

I accept as fact the tenant did not damage the landlord's property, significantly or otherwise.

The landlord has the onus to prove the grounds for the Notice. Pursuant to Rule 6.6 of the Rules, the standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed. The onus is on the landlord to show the tenant: **significantly** interfered; **unreasonably** disturbed, **seriously** jeopardized, and/or posed a **significant** risk.

The landlord's evidence was of one specific event: the phone call of December 8, 2021. While I acknowledge the threats were inappropriate, I find that the "threats" were uttered

out of long-standing frustrations with the previous landlord and to a lesser extent with the current landlord.

I find the landlord has failed to discharge its evidentiary burden to show that the tenant:

- i. **significantly** interfered with or **unreasonably** disturbed another occupant or the landlord of the residential property;
- ii. **seriously** jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- iii. put the landlord's property at **significant** risk;

The Notice is cancelled and of no force or effect.

Pursuant to section 72(1) of the *Act*, as the tenant has been successful in the application he may recover his filing fee from the landlord by reducing his rent by \$100.00 on a one time only basis.

### **Conclusion**

I grant the tenant's application and cancel the Notice. The tenancy shall continue until it is 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: March 3, 2022

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Residential Tenancy Branch