



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BC Housing  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNC

### Introduction

The tenant applied under the *Residential Tenancy Act* (the “Act”) to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”).

The tenant, an agent for the landlord (the “agent”), a janitor for the landlord, and a building manager and witness for the landlord attended the hearing. At the start of the hearing I introduced myself and the participants. The parties had the dispute resolution process explained to them and were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me.

The tenant confirmed receiving the evidence from the landlord and having had the opportunity to review the evidence prior to the hearing. The tenant confirmed that she did not serve the landlord with her evidence. As a result of the tenant failing to serve her evidence in accordance with the Rules of Procedure, the tenant’s evidence was excluded from the hearing. As an alternative, the tenant was provided the opportunity to speak to her evidence orally during the hearing.

### Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

### Background and Evidence

A month to month tenancy agreement began on February 1, 2009. Monthly rent in the amount of \$293.00 was due on the first day of each month, which is the tenant’s subsidized portion of the market rent. The rent was increased over the course of the tenancy to the current amount of \$328.00 per month, which is the tenant’s portion of the rent. The tenant was not required to pay a security deposit at the start of the tenancy.

The tenant confirmed that she was served on March 7, 2013 with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated March 7, 2013 alleging three causes. The first cause indicated on the 1 Month Notice is that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The second cause indicated on the 1 Month Notice is that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health and safety or lawful right of another occupant or the landlord. The third cause indicated on the 1 Month Notice is that the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant disputed the notice on March 11, 2013 which is within 10 days of being served with the 1 Month Notice on March 7, 2013. The effective vacancy date on the 1 Month Notice is listed as April 30, 2013.

The agent presented janitor, SS, who testified that on February 28, 2013, the tenant and her guest, later identified as RP, was in the elevator as she was waxing the floors in the hallway. According to SS, the tenant left the elevator while RP remained in the elevator and held the elevator door open. After some time, SS asked RP to either come out of the elevator or enter the elevator and let the doors close so the elevator could go to other floors. SS stated that the male, RP, then became angry and came from the elevator onto the newly waxed floors. SS then asked RP to stay in one area as the floors were very slippery from the wax she was applying to them and to be careful. SS stated that RP began to yell and scream at her using swear words such as the "f-word" and the "b-word". SS testified that she was afraid for her safety and felt that the male, RP was going to hit or kick her as his hands were moving up and down and he came very close to her yelling and swearing, about one foot from her face. According to SS, the male was intoxicated and smelled like alcohol. SS stated that RP said "shut your mouth" and was holding his fist towards her head which caused SS to be afraid for her safety. SS stated that she remains afraid of the male, RP. According to SS, shortly after the incident, the tenant began to use swear words with her but later apologized for what her guest, RP, did to her.

The tenant stated that she was not there to witness RP and his actions, but claims she was close enough to hear the conversation and claims that both SS and RP were yelling and swearing. The tenant confirmed that RP was permitted onto the property by her and that RP was a guest of the tenant on the date of this incident. The tenant also admitted that RP has a tendency to drink alcohol and that he apologized to SS. SS disputed the tenant's testimony and stated that RP has never apologized to her. The

agent denied receiving an apology from the tenant or the male, RP. According to the tenant, RP is a seventy-seven year old male who would not harm anybody but does drink alcohol regularly and is “obsessed” with her.

The agent called his witness, DC, who is a building manager for the landlord. DC testified that he has seen the male, RP at the rental building as recently as last Saturday night and was intoxicated again in the building. DC stated that the police were not called after the February 28, 2013 incident, but that SS was afraid for her safety and was very concerned. DC also stated that RP has “bumped into others accidentally in the building” and was found passed out in front of the building previously. The tenant and the agent did not have questions for witness DC during the hearing. The tenant did not dispute the testimony of witness DC.

The agent testified that the landlord has “Violence in the Workplace Policy” and submitted a copy of that policy in evidence. In addition, the agent submitted a copy of the critical incident report from the janitor, SS, regarding the February 28, 2013 incident as evidence. Also, correspondence which supports that SS contacted her supervisor due to her concern for her safety after the incident was submitted in evidence.

The agent made a verbal request for an order of possession during the hearing.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

**1 Month Notice to End Tenancy for Cause** – Although the tenant disputed some of the janitor SS’s testimony, **I find** janitor SS to be credible as her testimony was consistent with her incident report submitted in evidence, and her comments regarding the actions of the male, RP, sounded credible. The testimony of SS is also consistent with the testimony of the agent and witness, DC. It is important to note that the tenant was not in attendance at the time of the incident, and did not call RP as a witness to dispute the actions of RP. As a result, **I accept** the testimony of janitor SS that RP was close to her, within one foot or so to SS, and was yelling and swearing and waving her arms and was likely intoxicated at the time. **I accept** that the testimony of janitor SS that the actions of RP caused her to fear for her safety and that RP was a guest of the tenant at the time of the incident, and therefore the tenant was responsible for RP’s actions while in the rental building, according to the cause specified in the 1 Month Notice.

Therefore, based on the above, **I find** the landlord has met the burden of proof by proving that 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 that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health and safety or lawful right of another occupant or the landlord. A tenant is responsible for her guests at all times and in the matter before me, the tenant's guest caused the janitor SS to fear for her safety prompting the notification of her supervisor, the writing of a critical incident report and the continued fear of the male RP, who has been seen in the rental building as recently as last Saturday and in a reportedly intoxicated state. Given the above, **I dismiss** the tenant's application in full, without leave to reapply. **I uphold** the landlord's 1 Month Notice. The agent verbally requested an order of possession during the hearing.

As the tenant's application has been dismissed, **I find** it is not necessary to consider the third cause listed on the 1 Month Notice, relating to the breach of a material term of the tenancy agreement. Section 55 of the *Act* states:

#### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) **the landlord makes an oral request for an order of possession, and**
- (b) **the director dismisses the tenant's application or upholds the landlord's notice.**

**[emphasis added]**

Given the above and taking into account the agent's oral request for an order of possession during the hearing, **I find** that the landlord is entitled to an order of possession effective **April 30, 2013 at 1:00 p.m.**, which is the effective date on the 1 Month Notice. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause. I uphold the 1 Month Notice issued by the landlord.

I grant the landlord an order of possession effective **April 30, 2013 at 1:00 p.m.** This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 09, 2013

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Residential Tenancy Branch

