



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COAST FOUNDATION SOCIETY  
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 “1 Month Notice”) dated July 27, 2015.

The tenant, a tenant advocate (the “advocate”), an agent for the landlord (the “agent”), and a community mental health worker attended the hearing and were affirmed. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to the hearing. I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The tenant confirmed that he received the documentary evidence of the landlord and had the opportunity to review that evidence prior to the hearing. The tenant confirmed that he did not serve the landlord with any documents other than the notice of dispute resolution hearing and the application for dispute resolution. I find the tenant was served with the landlord’s documentary evidence package in accordance with the *Act*.

### Issue to be Decided

- Should the 1 Month Notice dated July 27, 2015 be cancelled?

### Background and Evidence

The parties agreed that a month to month tenancy agreement began on June 20, 2014. The parties agree that the tenant’s portion of subsidized rent is \$375 per month and is due on the first day of each month. The tenant was not asked to pay a security deposit or pet damage deposit during the tenancy as the tenancy is a related to subsidized

housing. As a result, the landlord does not have a security deposit or pet damage deposit.

The tenant confirmed that he was served on July 27, 2015 with a 1 Month Notice dated July 27, 2015 alleging one cause. The one cause listed on the 1 Month Notice is:

1. 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 tenant disputed the notice on August 4, 2015 which is within 10 days of being served with the 1 Month Notice on July 27, 2015. The effective vacancy date on the 1 Month Notice is listed as August 31, 2015.

The agent described a list of four incident dates in support of the cause listed on the 1 Month Notice. For ease of reference, I will number each date and include the relevant evidence for each below:

**1. October 25, 2014** – The agent deferred to the community mental health worker (the “worker”) to provide testimony. The worker referred to an incident report dated October 25, 2014. The worker testified that he was in the mental health office when he heard the tenant with an angry voice and that when the tenant began to approach him in an aggressive manner, he directed the tenant to stop which the tenant did not do. The worker testified that the tenant continued to approach the worker and came within two inches of the worker. The worker said that he was afraid for his safety and felt that the tenant was going to assault him.

The tenant’s response was that he was offended by comments that staff were making about a different resource that he alleged the staff were saying he belonged at. The tenant stated that he could not recall if he came within two inches of the worker or if he moved closer to the worker. The tenant stated that he wants an apology from the staff for stating that he belonged in a different resource.

**2. December 22, 2014** – The worker referred to an incident report dated December 22, 2014. The worker stated that five minutes before his shift ended, the tenant approached him and demanded that the worker assist him. The worker stated that tenant wanted help moving furniture into the building with his son. The worker testified that the tenant had a very aggressive tone similar to the tone on October 25, 2014, and that he was again approached by the tenant and was told to stop approaching. The worker said that the tenant ignored his request for the tenant to stop approaching him, and he thought the tenant was going to assault him and that he was afraid for his safety. The worker

said the tenant's son intervened and told the tenant not to do that to the worker. The tenant denies that he was aggressive on this date to the worker. The tenant also denies that his son advised him to stop and stated during the hearing to "leave my son out of this".

**3. June 30, 2015** – The worker and agent referred to a log report that indicates that the tenant had reported that someone pulled a knife on him and that he became very angry with staff and said call the "F" police right now. The tenant was described as very angry and that he approached the writer of the log report in a "ready to fight" manner. The report indicates that the writer said the police were called and about 7 or 8 police officers arrived. The tenant said the police did not talk to him at all and talked to the other party with the knife which the report indicates was a butter knife. The tenant later changed his testimony and confirmed that he did speak with police officers but that he approached them.

The worker stated that at the time of this incident the tenant had a closed fist and said if you don't call the police I am going to punch you. The tenant responded to this by stating that he did not recall that.

**4. July 22, 2015** – The worker referred to another incident report where a kitchen staff reported the matter to the worker and indicated that the tenant was yelling loudly in an angry tone to give him his food now. The tenant responded by saying he was waiting in line for food, and that the kitchen staff person called him "scum" and that he calmly replied to the kitchen staff "you need discipline young man". The tenant said that he was upset at the comments by the kitchen staff and that he does not recall yelling and stands by his decision to tell the kitchen staff that he needs discipline as he does not feel his reaction was unacceptable. The tenant then said "I rarely yell at anybody".

The agent requested permission to refer to a September 26, 2015 incident report, which was denied as the report was not submitted in evidence to the parties as required by the Rules of Procedure, and was after the date the 1 Month Notice was issued. In making this determination I considered the tenant advocate's objection to the consideration of evidence that was not before the tenant or the tenant advocate.

The agent vehemently denied an accusation made by the tenant during the hearing that the 1 Month Notice was made in retaliation for a complaint the tenant made against a staff member. The agent testified that they are not in the business of evicting people they house but if a person is acting in a threatening manner, they have a duty to protect their staff and other occupants in the building.

The agent referred to a warning letter dated July 10, 2015 which indicates that the tenant has been verbally abusive towards other tenants and staff over the past few months and that on June 30, 2015, the tenant had aggressive behaviour and threatening of physical assault through words and actions towards staff. The tenant stated that he had received the letter and then changed his testimony by stating that he assumed he received the letter but that he could not recall.

The tenant advocate testified that the landlord in this matter has a higher burden to prove given that the tenant is on a disability pension. The agent stated that this specific residence has on-site staff which is rare and that the tenant is just not a suitable candidate due to his threatening and aggressive behavior.

The agent made an oral request for an order of possession during the hearing. The tenant advocate requested that if an order of possession is granted that due to the tenant being on a disability pension, that a later order of possession such as October 31, 2015 or later be considered. The agent stated that he would agree to an order of possession for October 31, 2015, if an order of possession is granted.

### Analysis

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

The tenant applied to dispute the 1 Month Notice within the 10 day timeline permitted under section 47 of the *Act*. Once a tenant has disputed a notice within the related timeline permitted under the *Act*, the onus of proof reverts to the landlord to provide sufficient evidence to support that the notice is valid. If the landlord fails to provide sufficient evidence, the notice will be cancelled; however, if the landlord succeeds in providing sufficient evidence, the notice will be upheld.

In the matter before me, the landlord listed one cause on the 1 Month Notice, namely:

- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

In support of this cause, the landlord submitted 32 pages of documentary evidence and presented a total of four reports consisting of three incident reports and one log report regarding concerns related to the tenant's behavior. For ease of reference, I will refer to the October 25, 2014, December 22, 2014, June 30, 2015, and July 22, 2015 reports in order as report 1, report 2, report 3 and report 4. I have reviewed the testimony and the

four reports and find that the landlord has provided sufficient evidence to support the cause listed on the 1 Month Notice dated July 27, 2015.

In reaching this conclusion, I have considered that the tenant did not recall whether he approached the worker and came within 2 inches of the worker in an aggressive manner as indicated in report 1. I have also considered that the tenant did not specifically deny aggressively approaching the worker as indicated in report 1, and that he could not recall the matter. Furthermore, I have considered that the worker was directly involved with the tenant in reports 1 and 2 and that on both occasions the worker felt that he was going to be assaulted when the tenant ignored his request for the tenant to stop approaching him in an aggressive manner.

As the tenant stated he could not recall being aggressive as indicated in report 1, making a fist and threatening to punch a staff member if they did not call the police as indicated in report 3, or receiving the warning letter dated July 10, 2015, I find the tenant's recall of events to be unreliable and his testimony to be inconsistent. Therefore, I prefer the testimony and documentary evidence of the agent and worker over that of the tenant as I find the recall of the agent and worker to be consistent and detailed throughout the hearing.

I also reject the tenant advocate's claim that the landlord has a higher burden of proof if the tenant is on a disability pension as the *Act* does not specify a higher burden for such, and aggressive behavior and/or acting in a threatening manner towards the landlord's staff or other occupants is not acceptable by a tenant during any tenancy.

Based on the above, I find the landlord's 1 Month Notice dated July 27, 2015 is valid. I **dismiss** the tenant's application to cancel the 1 Month Notice and I **uphold** the landlord's 1 Month Notice.

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.**

[my emphasis added]

Given the above and taking into account the agent's oral request for an order of possession during the hearing, **I grant** the landlord an order of possession effective **October 31, 2015 at 1:00 p.m.** as the landlord agreed to that date during the hearing.

#### Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed.

I uphold the 1 Month Notice issued by the landlord dated July 27, 2015.

The landlord has been granted an order of possession effective October 31, 2015 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: October 9, 2015

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Residential Tenancy Branch

