



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Coastal Foundation Society (1974)  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR-MT, CNC

### Introduction

This hearing dealt with the tenants' request pursuant to the Residential Tenancy Act (the Act) for:

- cancellation of the One Month Notice to End Tenancy for Cause (the One Month Notice), issued pursuant to section 47 of the Act; and
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice), issued pursuant to section 46 of the Act and for an extension of the timeline for disputing the Notice, pursuant to section 66 of the Act.

The respondent (landlord), represented by KO (the landlord) called into this teleconference at the date and time set for the hearing of this matter. The applicant (tenant) did not, although I waited until 9:55 A.M. to enable him to connect with this teleconference hearing scheduled for 9:30 A.M.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the respondent and I were the only persons who had called into this teleconference.

The landlord confirmed he received the Notice of Hearing and evidence from the tenant on March 16, 2020. The landlord affirmed he served his evidence to the tenant on April 23, 2020. I find that all parties have been served with the required documents.

I note that section 55 of the *Act* requires that when a tenant submits an application 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 if the application is

dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

#### Preliminary Issue – Tenant’s application dismissed

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

##### **Rule 7 – During the hearing**

##### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

##### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the applicant I order the application dismissed without leave to reapply.

However, according to *M.B.B. v. Affordable Housing Charitable Association*, 2018 BSCS 2418, the landlord must still prove the grounds to end the tenancy:

[27] I accept that it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the ground that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

#### Preliminary Issue – named Landlord

The landlord explained the named landlord JP is the director for Coastal Foundation Society (1974). The landlord also explained the tenancy agreement submitted into evidence names AH as the landlord because this is the building name. However, the landlord is Coastal Foundation Society (1974).

Section 64(3)(c) of the *Act* allows me to amend the application, which I have done to remove the director’s name (JP) and include the proper landlord - Coastal Foundation Society (1974) - as the respondent of this application.

### Preliminary Issue – 10 Day Notice

At the outset of the hearing the landlord affirmed a 10 Day Notice was not served to the tenant.

The tenant had applied for an extension of time and to cancel a 10 Day Notice. No photocopy of a 10 Day Notice was submitted into evidence.

Section 62(4)(b) of the Act states the director may dismiss all or part of an application for dispute resolution which does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the claim for cancellation of the 10 Day Notice.

### Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. If the tenant's application is dismissed, is the landlord entitled to an Order of Possession based on the One Month Notice?

### Background and Evidence

While I have turned my mind to all the evidence provided by the parties, including documentary evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending party; it is her obligation to present the evidence to substantiate her claim.

The landlord affirmed the tenancy started on December 23, 2016. Monthly rent is \$375.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$300.00 was collected and the landlord still holds it in trust. A copy of the tenancy agreement was submitted into evidence. The tenant continues to reside at the rental unit.

A copy of the One Month Notice was provided. The reasons to end the tenancy are:

- The tenant or a person permitted on the property by the tenant has
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
  - Put the landlord's property at significant risk.
- Tenant has not done required repairs of damage to the unit/site.

The One Month Notice is dated February 19, 2020 and was delivered in person to the tenant on February 19, 2020. The effective date of the Notice is March 31, 2020.

The details of the cause are:

The tenant has received a Fire and Safety order from [anonymized] Fire Department on January 16, 2019 regarding the unsafe conditions of their suite. This tenant has identified with a history of hoarding and inability to control the amount of items stored inside their suite. The tenant's support staff have attempted to work with the tenant over the past year with no improvements despite multiple warning letters, suite inspections and follow ups from the site staff. The condition of the tenant's suite continues to get worse and the tenant is taking no actions to remedy the apparent fire and safety hazards addressed within their suite.

A witnessed Proof of Service form (RTB-34) was submitted into evidence. The landlord affirmed the One Month Notice was at first posted to the tenant's door. However, the tenant opened the door and the landlord hand delivered the One Month Notice to the tenant.

The landlord also submitted five letters sent to the tenant warning him about fire hazard and safety concerns due to the tenant's excessive clutter.

The letter dated August 13, 2019 states:

It has come to Coast Properties attention that you have been consistently leaving items in the hallway and have been disregarding the repeated requests of the building staff to clear it out. This poses a safety concern and fire hazard.

Under section 18-b, subsection (i) of your signed residential tenancy agreement, "The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access."

This notice serves as your warning letter that failure to comply with these conditions can and will result in a "Notice to End Tenancy".

Moving forward, items left unattended in the hallways will be disposed of without further notice.

We would like to support you in maintaining your housing at Alouette Heights.

Properties request that you review this letter with your Support Worker.

The letter dated December 05, 2019 states:

It has come to Coast Properties attention that during your suite inspection on Monday, November 25, 2019, your kitchen, hallway and living area were found to have excessive clutter. This poses a fire and safety hazard and must be addressed in a timely manner.

According to your signed residential tenancy agreement, "the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access."

A follow up inspection will be scheduled for the first week of January 2020 to ensure you are complying with the rules of the tenancy agreement and have taken action to ensure your unit is no longer a fire and safety hazard. You will need to de-clutter your unit and ensure there is access throughout your suite to complete a thorough suite inspection during the follow up.

Failure to comply with these conditions may result in a "Notice to End Tenancy".

We would like to support you in maintaining your housing at [anonymized] request that you review this letter with your Support Worker.

The landlord affirmed a fire inspection happened on September 19, 2017 and the tenant was warned for excessive clutter in his rental unit. A second fire inspection happened on January 16, 2019 and the tenant was warned again due to excessive clutter and for having flammable liquids and combustible materials in his rental unit.

The landlord affirmed the tenant has a health care worker that assists him regarding the clutter issue. However, every time the tenant is asked about cleaning his rental unit he get aggressive and threatens the health care worker.

The landlord affirmed the tenant's rental unit is so cluttered that the tenant is hoarding objects in the hallway on the exterior of the rental unit.

The landlord affirmed there are pest control issues with the tenant's rental unit, as there is a significant amount of cluttered objects.

### Analysis

Based on the undisputed landlord's testimony, I find the tenant was served the Notice on February 19, 2020, in accordance with section 88 (a) of the Act. I find that the tenant's application was submitted before the ten-day deadline to dispute the Notice, in accordance with Section 47 (4) of the Act.

Section 47 of the Act allows a landlord to end a tenancy for cause:

(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) The tenant or a person permitted on the property by the tenant has:

[...]

(ii) Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

(iii) Put the landlord's property at significant risk.

The cohesive testimony provided by the landlord explained the tenant has an excessive amount of cluttered objects in his rental unit, including flammable liquids and combustible materials.

The tenant received five letters from the landlord, including two in August and December 2019 about hoarding in his rental unit.

I find the action of the tenant (storing a large number of items in his rental unit, despite several warnings to remove these items and help from a health care worker), put the landlord's property at significant risk. I therefore find the landlord is entitled to end this tenancy, pursuant to section 47(1)(d)(iii) of the Act.

I find the form and content of the Notice complies with section 52 of the Act, as the One Month Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the Notice, states the grounds for ending the tenancy and is in the approved form.

I find that pursuant to section 55(2)(b) of the Act, the landlord is entitled to an order of possession effective March 31, 2020, the effective date of the Notice.

I warn the tenant that he may be liable for any costs the landlords incur to enforce the Order of Possession.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective on March 31, 2020. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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: May 06, 2020

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Residential Tenancy Branch