



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Coast Foundation Society (1974) and/or Coast Mental Health Society and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was set to deal with a tenant's application to cancel a One Month Notice to End Tenancy for Cause ("1 Month Notice"). Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

### Preliminary and Procedural Matters

#### 1. Service of hearing materials

At the outset of the hearing I explored service of hearing materials upon each other.

The tenant testified that he sent his proceeding package to the landlord via registered mail. The landlord's agents responded that it was received by regular mail but that they were willing to be deemed sufficiently served. I deemed the landlord sufficiently served pursuant to the authority afforded me under section 71 of the Act.

The landlord posted its evidence package to the tenant's door on October 19, 2020. The tenant confirmed receipt of the landlord's evidence package and confirmed he had the opportunity to review and prepare a response to it.

#### 2. Naming of landlord

I noted that the tenant had named an individual as the landlord which was inconsistent with the name of the landlord appearing on the 1 Month Notice and "Program Agreement". With consent of both parties, I amended the style of cause to reflect the landlord as named on the 1 Month Notice and the "Program Agreement".

### 3. Jurisdiction

I was not provided a copy of a written tenancy agreement. Rather, the landlord submitted a copy of a "Program Agreement" which includes the following statements (name of landlord omitted for privacy):

#### THE AGREEMENT

- This Agreement is between you, the Program Participant/Resident, and Society in consultation with BC Housing as applicable.
- You will have housing and services provided by us while you are a participant with this program.
- The Residential Tenancy Act (or successor legislation) does not apply to this Agreement. If any provision in the Agreement is found by a court to be invalid or unenforceable, that provision will be severed from this Agreement and the remainder remains in full force and effect.
- Your photo will be taken for building and program staff to confirm your identity.
- Your right to privacy is important. We protect confidentiality in alignment with provincial requirements while balancing the need to share information with other care providers in order to provide you with the best health care possible. If you have concerns, please talk to staff.
- Your placement with this program begins on 20 / 08 / 2019  
DD MM YYYY

With respect to the statement that the *Residential Tenancy Act* does not apply, the landlord's agents stated that they offer program services to people with mental health and addiction issues and the "Program Agreement" is intended to outline the parties' respective rights and obligations under the program; however, the landlord also provides housing to the tenant and the provision of housing is the key element of their relationship. The landlord's agents stated that in some cases they enter into a separate tenancy agreement with the occupants but in this case they had not. The landlord's agents stated that the issue of jurisdiction concerning the same type of Program Agreement on a property operated by the landlord went before the Supreme Court of British Columbia a few years ago and the court found the *Residential Tenancy Act* applies.

Section 4 of the Act provides exemptions from the Act. I read from section 4 aloud and the landlord's agent responded that none of the exemptions applies to the living accommodation provided to the tenant.

The tenant was of the view the Act applies to his right to occupy the rental unit.

The Act conveys several protective rights to tenants and since both parties were of the position the Act applies to the living accommodation, I accepted that the Act applies to the living accommodation and that I have jurisdiction to resolve this dispute.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be upheld or set aside?

Background and Evidence

The tenancy started on August 20, 2019 on a month to month basis. The tenant is required to pay rent of \$375.00 on fir first day of every month.

On August 28, 2020 the landlord personally served the tenant with the subject 1 Month Notice during a meeting that took place with the landlord's agent, the tenant, and representatives from the SPCA . The 1 Month Notice has a stated effective date of September 30, 2020 and indicates the following reasons for ending the tenancy:

- ☒ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
- ☒ 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

In the Details of Cause, the landlord wrote:

The final warning letter regarding the cause of eviction is attached with this notice. The tenant is seriously jeopardizing the health and safety of co-tenants and staff as they have an aggressive dog that the tenant refuses to muzzle on the property. This dog has been officially labeled aggressive by the local SPCA.

The final warning letter referred to above is dated July 27, 2020 and provides as follows (with names and location omitted for privacy reasons):

It has been brought to \_\_\_\_\_ attention that following the receipt of a letter from management on July 22, 2020, you have not taken any measures towards finding alternative accommodations for your dog, Cleo. The local SPCA has determined during their visit on July 21, 2020 that your dog, Cleo, is dangerous and aggressive. Cleo poses a health and safety risk to your co-tenants and site staff as you continue to allow Cleo to walk around in the common areas of the building un-muzzled.

This is your final Warning Letter. **You are asked to find alternative housing for Cleo immediately and have Cleo off-site by 12:00pm on Wednesday, July 29<sup>th</sup>, 2020.**

We understand that this might be a difficult task to complete as Cleo is your companion, however, the safety and well-being of all tenants and staff at \_\_\_\_\_ is our first priority.

Failure to comply with the above will lead to eviction proceedings. You are jeopardizing your tenancy at \_\_\_\_\_ and we want to ensure you maintain adequate housing, while following the rules.

You may wish to connect with staff for support in helping find a new placement for Cleo.

We hope you take this Final Warning Letter seriously.

The landlord had issued the first warning letter to the tenant on July 22, 2020 and it provides as follows (names and location omitted for privacy purposes):

It has been determined by SPCA visit on July 21st, 2020 that your dog (Cleo) has been deemed a Dangerous Dog within the community. Based on the Pet Agreement that you signed with \_\_\_\_\_ and not being able to properly care and take responsibility for Cleo, Cleo will not be allowed to stay at \_\_\_\_\_ moving forward. Our expectation is that you will have Cleo removed from the site by July 25<sup>th</sup> at 12pm. If Cleo is still on site at that time then we will need to call the SPCA to report that she is still on site.

Please feel free to connect with staff for support in helping find a new placement for Cleo. We understand that SPCA has put some conditions on you in caring (muzzled and on leash at all times outside of suite) for Cleo and will need to report to SPCA any violation of these issues.

Thank you for understanding and for your cooperation,

The letter of July 22, 2020 refers to a Pet Agreement; however, I was not provided a copy of a Pet Agreement. I was provided a copy of a letter written by the landlord on April 9, 2020 with respect to pet ownership. The letter provides as follows, in part (names and location omitted for privacy reasons):

All animals residing at \_\_\_\_\_ should be licensed through the City of \_\_\_\_\_, and if payment for a dog license would create a hardship at this time, we are prepared to assist you in this matter and pay for a dog license.■

However, we also require you to have a signed pet agreement that outlines our expectations concerning the care, well-being and management of your pet.

These expectations include:

- Providing for the necessities of life – food, water, and exercise
- That the animal is not left in your van for periods of time
- That the dog is on leash all times you are in common areas on the property
- You are in control of you dog by holding onto the leash at all times
- That the dog is not allowed to wander in any common areas unattended

Please recognize as well that due to the size of the dog, co-tenants may be fearful for their own safety or the safety of their pets and may be triggered due to past experiences with dogs. At no time will we tolerate any situation where the dog is being used to intimidate either staff and/or co-tenants.

***Landlord's submissions***

The landlord's agents submitted that on July 14, 2020 a representative from the SPCA came to the property and informed the landlord's agents that the tenant's dog had been deemed aggressive and that the designation required the tenant to apply for an aggressive dog license from the City and keep the dog muzzled at all times when outside the rental unit. The SPCA requested the landlord report back to them if they observed the tenant's dog unmuzzled.

The landlord's agents acknowledged that they were unaware of the incident(s) that resulted in the SPCA deeming the tenant's dog as aggressive.

The landlord's agents testified that the SPCA gave the tenant documentation outlining the requirements for keeping a dog that is deemed aggressive on July 21, 2020.

The landlord's agents submitted that after the SPCA informed them the tenant's dog was deemed aggressive, the landlord's agents observed the tenant's dog in the common areas and at times the dog was muzzled and at other times the dog was unmuzzled. Also, the landlord did not receive any confirmation the tenant had obtained an aggressive dog license from the City. Since the tenant was not complying with the SPCA requirements for an aggressive dog the landlord moved to end the tenancy.

The landlord's agents also stated they issued warning letters to the tenant requiring him to remove the dog from the property and since he did not, the landlord issued the 1 Month Notice to the tenant.

The landlord's agents acknowledged that they did not inform the tenant that failure to muzzle the dog or get an aggressive dog license would result in termination of the tenancy.

As evidence the tenant's dog was deemed aggressive, the landlord provided a copy of an email written by a representative with the City on October 6, 2020. The email states (with names and locations omitted for privacy):

The SPCA is a contractor for Bylaw and Licensing Services. In that regard, please accept this email as confirmation that the brindle brown Mastiff Cleo owned by [REDACTED] was deemed aggressive on July 14, 2020.

This stipulates that M. [REDACTED] must ensure that Cleo is wearing a muzzle and on a leash when in common areas and public spaces, that he has a 6-sided enclosure (waived while he is staying at [REDACTED]), display signage showing that there is a dangerous dog on the premises, and obtain an aggressive dog license from the City.

Animal Control Officer [REDACTED] shared this information verbally and in writing with Mr. [REDACTED] in our meeting on August 28, 2020.

### ***Tenant's submissions***

The tenant submitted that his dog is not aggressive and that he does not know why the SPCA deemed his dog as aggressive. The tenant acknowledged that he received a bylaw infraction for allowing his dog to roam but this was not on the landlord's property. The tenant eventually, with much probing, acknowledged that there was an incident that occurred in mid-July 2020 on the landlord's property and that this may have resulted in a complaint to the SPCA.

The tenant testified that he was outside with his dog at approximately 3 a.m. in mid-July 2020 to permit the dog to urinate when another tenant came outside with her dog. The tenant had let go of the dog's leash while he was getting something out of his van and his dog ran over to the other tenant and her dog. The tenant asserted his dog did not bite or cause impurity to the other tenant or the other dog but that "she" was scared.

The tenant acknowledged that the SPCA informed him to keep his dog muzzled and to license the dog as an aggressive dog with the City; however, he does not agree with the SPCA's designation that his dog is aggressive and the tenant intends to fight that designation. The tenant claims he always muzzles his dog when outside the rental unit but he has not licensed the dog as aggressive with the City as he does not accept that his dog is aggressive.

Before the hearing ended, I gave the parties my findings orally and I issued orders to the tenant orally. The tenant responded that he understood my orders and that he understood failure to comply with my orders will put the landlord in a position to end the tenancy regardless of whether he agrees with the "aggressive dog" designation placed on his dog by the SPCA.

### **Analysis**

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice.

Upon review of the documentation provided by the landlord, and the oral testimony and submissions of both parties, I provide the following findings and reasons.

The landlord is unaware of any incident(s) that lead to the tenant's dog being deemed aggressive by the SPCA . I heard of an incident from the tenant that took place in mid-July 2020. Assuming the incident that occurred on the property in mid-July 2020 lead to a complaint to the SPCA and the designation of the tenant's dog as being "deemed aggressive" I turn to the communication to the tenant from the landlord.

The written communication given to the tenant by the landlord on July 22, 2020 requires the tenant to remove the dog from the premises. The landlord does not give the tenant an option to keep the dog and preserve the tenancy if he were to ensure the dog is muzzled and licensed as an aggressive dog; yet, in the final warning letter of July 27, 2020 the landlord refers to the tenant not muzzling the dog and this is putting the other occupants at risk. Rather, in the letter of July 27, 2020 the landlord requires the tenant to remove the dog from the premises and does not give the tenant the option to keep the dog muzzled and licensed as an aggressive dog to preserve his tenancy. I find the landlord's requirements of the tenant to preserve the tenancy are inconsistent as they require the tenant to remove the dog but also allude to his failure to keep the dog muzzled as the reason for the final warning.

According to the email written by the City, the requirement to keep the dog muzzled and licensed as an aggressive dog was shared with the tenant on August 28, 2020 during a meeting with the tenant but I heard that it was at this same meeting that the tenant was served with the 1 Month Notice. It would appear to me to be premature to give the tenant an eviction notice at the same meeting he is given written documentation requiring muzzling and licensing of the dog.

Upon consideration of this evidence, I am of the view the tenant was not put on notice that failure to muzzle the dog while in common areas and failure to license the dog as an aggressive dog would put his tenancy in jeopardy. Yet, these are the reasons the landlord's agent gave me for moving to end the tenancy in their oral submissions. If in fact, the landlord required the tenant to muzzle the dog while in common areas and license the dog as an aggressive dog to continue the tenancy I find this was not clearly and consistently communicated to the tenant. Rather, it would appear that the landlord instructed to the tenant to remove his dog from the premises as being the only option to maintain the tenancy.



Of further consideration, I was not provided a copy of a Pet Agreement even though the letter of July 22, 2020 refers to one. Rather, the only expectations concerning pet ownership are in the landlord's letter of April 9, 2020 and I do not see evidence the tenant violated those expectations with the exception that the tenant acknowledged letting go of the leash briefly during the incident in mid-July 2020.

In making my decision, I have also considered that the other tenant who was involved in the incident in mid-July 2020 did not make a complaint to the landlord. Nor, was the landlord provided details of an incident that would lead to a designation of "aggressive dog" by the SPCA or the City that would lead me to conclude the other occupants or the landlord are at significant risk by the tenant keeping his dog on the property, especially if the dog is muzzled as required by the SPCA. Therefore, I find it reasonable and appropriate in these circumstances to cancel the 1 Month Notice served on August 28, 2020 but clearly set out the expectations of the tenant to muzzle his dog, among other things, to preserve his tenancy.

I recognize that there is potential for persons or other animals to be seriously harmed by an aggressive dog. At this point in time, the tenant's dog has been deemed aggressive by an authority who has authority to do so and since the tenancy is continuing at this time I find it reasonable and appropriate to issue the following orders to the tenant pursuant to the authority afforded me under section 62 of the Act.

**I ORDER the TENANT to:**

- 1. Keep his dog "Cleo" muzzled at ALL TIMES when the dog is outside of the rental unit, effective IMMEDIATELY.**
- 2. Keep his dog "Cleo" on a leash at ALL TIMES when the dog is outside of the rental unit and at ALL TIMES maintain a secure hold of the leash, effective IMMEDIATELY.**
- 3. Keep his dog "Cleo" muzzled at ANY TIME the landlord's agents, contractors, employees, or the like, enter the rental unit. The landlord is expected to give the tenant advance notice of entry so that the tenant may comply with this order.**
- 4. Obtain an aggressive dog license from the City WITHIN TWO WEEKS and give a copy of the license to the landlord to demonstrate compliance with this order and the tenant must continue to maintain/renew the license when the license expires so long as the tenant keeps the dog "Cleo" at the rental unit.**

- 5. As stipulated in the email from the City, display signage indicating there is a dangerous dog in the premises. I order the signage to be displayed on or beside the entry door to the rental unit and this is to be accomplished EFFECTIVE IMMEDIATELY upon receipt of this decision.**

The first four orders above were given orally during the hearing. The fifth order was not and it must be fulfilled immediately upon the tenant receiving this decision.

The tenant was also informed during the hearing, and I state again in this decision, that the health and safety of other occupants and the landlord, and their possessions, including pets, is paramount and that a single infraction of any of my orders above will be grounds for the landlord to issue another 1 Month Notice to End Tenancy for Cause citing the following reason for ending the tenancy:



Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

Should the tenant fail to comply with my orders and the situation is so severe and urgent that it would be unreasonable to wait for a 1 Month Notice to take effect, the landlord may apply for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act without first issuing a 1 Month Notice.

Should the tenant succeed in having the dog's designation as an aggressive dog overturned, cancelled or rescinded, the tenant must show the landlord official documentation from the SPCA, the City or a court at which time the parties are at liberty to seek alternative requirements for keeping the dog at the premises.

### Conclusion

The 1 Month Notice has even set aside with the affect that the tenancy continues at this time.

The tenant has been given orders by way of this decision and failure to comply with my orders will be grounds for the landlord to end the tenancy.

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 04, 2020

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Residential Tenancy Branch