



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55.

The tenant did not attend the hearing, however he was represented by his advocate, CB. The landlord was represented at the hearing by program manager, SG ("landlord"). As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Application for Dispute Resolution and stated he had no issues with timely service of documents.

The tenant's advocate denied being served with the landlord's evidence. The landlord testified that his colleague, program manager DM personally served the tenant with a single package of evidence on October 6, 2021 and that this was witnessed by another colleague, KD. The tenant's advocate acknowledges the last time she spoke with the tenant was earlier in the week and that the tenant did not provide the landlord's evidence to her. I find the tenant has been duly served with the landlord's evidence on October 6<sup>th</sup> pursuant to sections 88 and 90 of the *Act*, at least 7 days prior to the hearing in accordance with rule 3.15 of the Residential Tenancy Branch rules of procedure. The landlord's evidence would be used in this decision, despite it not being before the tenant's advocate.

### Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be upheld or cancelled?

### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The parties are bound by a program agreement which is not a tenancy agreement. The program agreement is renewed every year. The tenant moved into the landlord's facility on September 13, 2019 and is currently bound by the agreement last renewed on January 1, 2021. The tenant's rent is subsidized and he pays \$375.00 per month for rent and the remainder is paid by BC Housing.

On June 11, 2021, the landlord served the tenant with a One Month Notice to End Tenancy for Cause by posting it to the tenant's door. A copy of the notice and a proof of service document were provided by the landlord. The notice provides an effective date of July 31, 2021 and states the following reasons for ending the tenancy:

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;
2. 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;

The notice provides multiple examples of the alleged offences spanning a period from October 31, 2020 to May 22, 2021.

The landlord referred me to the document "Evidence Tracking Form" which documents the tenant's history at the residence. The landlord also referred me to twelve warning letters sent to the tenant between September 16, 2020 and May 28, 2021.

The landlord read out excerpts from the "Evidence Tracking Form" to highlight how the tenant has significantly interfered with or unreasonably disturbed other occupants and the landlord or seriously jeopardized their health, safety or lawful rights.

In 2021, the tenant spat on another resident of the building on March 9<sup>th</sup>. The landlord gave the tenant a warning letter the following day advising the tenant that his actions and behaviour are unacceptable and that tenants have a right to live in a safe and peaceful environment. On the same day, March 9<sup>th</sup>, the tenant's excessive cluttering prevented fire suppression technicians from accessing the suite to perform a test of the fire suppression equipment. Another warning letter was sent to tenant recommending the tenant declutter his suite, remove excess garbage and request assistance from his support worker when needed.

The landlord cited another incident on May 19<sup>th</sup> whereby the tenant had threatened another resident at the facility, threw a chair in the common area and was witnessed throwing garbage at another resident's door.

Further, on May 20<sup>th</sup>, the tenant once again spat on the other resident after threatening him. The police were called, and they escorted the tenant off the property, telling the tenant not to come back before 4:00 p.m. on May 21<sup>st</sup>. The tenant reattended the property in the early hours of May 21<sup>st</sup>, threw a liquid on the same resident, kicked another resident's door and threw a hypodermic needle ("rig") at it. The police escorted the tenant from the property and told him not to return until May 25, 2021.

The landlord testified the tenant commonly "walks around" the property with a syringe in his arm. This provokes panic amongst the residents, some of whom are recovering drug addicts. Despite being given multiple letters regarding keeping his unit free of clutter and violence towards other residents, the tenant's behaviour has not improved. Further, the landlord gave testimony of multiple instances where the tenant became belligerent and violent to the staff at the residential facility after being revived from drug overdoses.

The tenant's advocate gave the following submissions. At a previous hearing regarding a different tenant, the landlord inferred the *Residential Tenancy Act* does not apply to that tenancy. The tenant's advocate sought a ruling that the *Residential Tenancy Act* applies in this case and the landlord agreed that it does. During the hearing, I confirmed that I accepted the jurisdiction to render a decision in this matter.

The advocate submits that the tenant's building has recently been put in "lockdown" due to the pandemic and accessing the tenant has been difficult. The tenant does not have his own phone, making it difficult for her to speak with the tenant.

The tenant's advocate did not have a copy of the "Evidence Tracking Form" so she was not aware of the tenant's history. The tenant's advocate submits that much of the tenant's history recounted by the landlord dates back to 2020 and that she is only aware of the incidents referred to on the landlord's notice to end tenancy. The landlord agreed that my decision should be focussed on events leading up to the issuance of the notice to end tenancy.

The advocate argues that the history recounted all involves another unnamed resident of the facility. That resident no longer resides in the facility. Although it appears that the (now former) resident is the victim and the tenant is the aggressor, the portrayal isn't accurate. The advocate submits that the tenant retaliates when he is provoked by that (now former) resident. The advocate submits that the tenant is now regretful of the incidents he was involved in and that he has approached the building manager and told her he wants to start mediation. The advocate submits that the other resident did not want to cooperate in mediation with the tenant.

#### Analysis

Based on the landlord's testimony, I deem the tenant served with the landlord's One Month Notice to End Tenancy for Cause on June 14, 2021, three days after it was posted to his door on June 11, 2021 in accordance with sections 88 and 90 of the *Act*.

The tenant filed an application to dispute the notice on June 21<sup>st</sup>, within 10 days as required under section 47 of the *Act*. If the tenant files the application, the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the any of the reasons identified in the Notice.

Turning to the "details of cause" listed in the landlord's notice to end tenancy, the landlord lists multiple instances of the tenant significantly interfering with or unreasonably disturbing other occupants of the living facility or the landlord. I note here that although the tenant's advocate presented submissions downplaying the severity of the tenant's actions and provided reasons as to why the tenant behaved as he did, the tenant did not attend this hearing to dispute the facts as alleged by the landlord during his testimony. As the veracity of the landlord's evidence was not disputed, I find that the landlord has proven, on a balance of probabilities that the tenant committed the acts as stated in the "details of cause".

From the landlord, I heard testimony of the tenant spitting on another resident of the building, once on March 9<sup>th</sup> and again on May 20<sup>th</sup>. The May 20<sup>th</sup> spitting incident happened very soon after the tenant was given a written letter from the landlord advising him that spitting on a co-tenant is unacceptable. Likewise, the instances of the tenant throwing liquid at another resident, throwing a hypodermic “rig” and kicking another resident’s door on May 21<sup>st</sup> are clear examples of the tenant jeopardizing the health or safety or lawful right of another occupant or the landlord.

I find the pattern of repeatedly throwing objects, kicking doors and spitting is sufficient cause for the landlord to issue a notice to end tenancy. Despite the tenant’s advocate presenting reasoning for the tenant’s actions, I do not find those reasons sufficient to justify putting the health, safety or lawful rights of the other occupants or the landlord at risk. For this reason, I uphold the landlord’s notice to end tenancy.

Section 55 states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*]. I have examined the notice to end tenancy and find it complies with form and content provisions. As such the landlord is granted an order of possession. Since the effective date stated in the notice to end tenancy has passed, the landlord is entitled to an order of possession effective 2 days after service upon the tenant.

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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: October 25, 2021

---

Residential Tenancy Branch