



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NANAIMO F.O.S NON PROFIT HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNC

### Introduction

The tenant submitted an Application for Dispute Resolution (“application”) under the *Residential Tenancy Act* (“Act”) to cancel a 1 Month Notice to End Tenancy for Cause dated May 15, 2018 (“1 Month Notice”).

An agent for the landlord (“agent”), the tenant and a tenant support person attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The agent and tenant 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.

Both parties confirmed that they received and had the opportunity to review the documentary evidence served upon them. I find the parties were sufficiently served under the *Act* as a result.

### Preliminary and Procedural Matter

The landlord confirmed their email address at the outset of the hearing. The tenant confirmed that he did not have an email address and would prefer to receive the decision by regular mail. The parties confirmed their understanding that the decision would be emailed to the landlord and sent by regular mail to the tenant.

### Issue to be Decided

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

### Background and Evidence

The parties agreed that a month to month tenancy began on December 1, 2010.

The tenant confirmed that he was served with the 1 Month Notice on May 15, 2018 and disputed the 1 Month Notice on May 23, 2018. The landlord listed two causes on the 1 Month Notice, namely:

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 of another occupant or the landlord.

On the details of the cause, the landlord writes in part:

“Initiated physical altercation with Landlord’s employee....threatened, berated, name calling including racial epithets. Required police involvement. Loud, aggressive, intimidating behaviour, frightening other occupants and staff on many occasions; [The tenant] has been notified that this behaviour, intimidation, and threats will not be tolerated. He has received both...verbal and a written warning.”

[Reproduced as written except for anonymizing name of tenant]

The tenant confirmed that he received an October 25, 2017 warning letter (“second warning letter”) that indicates that he was also warned in September 2017 regarding his behaviour being threatening and intimidating. In the second warning letter the tenant is clearly warned not to shout at the landlord agent or at any other person in the building and that the landlord is a volunteer organization that provides affordable housing for persons suffering with chronic mental health issues and that they have an obligation to all of the tenants to ensure a calm, safe environment for all tenants and that shouting and intimidation will not be tolerated further.

The agent stated that she has had many sleepless nights at having to evict this tenant as it goes against their mandate to provide a safe home for those with mental illness however due to the tenant’s continuing aggressive behaviour towards staff and other occupants that the landlord has no choice at this point as they must act to protect the rights of the landlord and other occupants.

The landlord also submitted in evidence two Affidavits from tenant DJRM ("first affidavit") and tenant MEC ("second affidavit"). The first affidavit reads in part:

"...I have lived in this building for approximately 6 years and have not had any issues with any person in this building except for the tenant...

...

Approximately 4 weeks ago (on a Wednesday evening about 7pm) I was standing in the hallway speaking with another tenant named [M]. We were minding our own business and not speaking loudly. [The tenant] stormed out of this unit and told us to "shut the fuck up". I tried to respond calmly and say that we were just talking but he kept just shouting slurs and telling us to shut up and "get the fuck out". The tenant I was with was already nervous about [the tenant] and so he began to walk through the main door and began climbing up the stairs at which point [the tenant] got very close to him and started calling him a "nigger" and making gestures like he wanted to fight.

...

I have seen [the tenant] kicking and pounding at [V's] front door and swearing and shouting. [The tenant] was saying "I am the big cheese here" and telling [V] to go and kill himself.

...

When [the tenant] gets angry (and it does not take much) he will come up and get right in your face and then shouts and is rude. He will not back down and usually whoever he does this to will try and leave the situation...

...

[The tenant] is a terrible bully. He is the only one in the building that acts like this and it is very unpleasant..."

[Reproduced as written except for anonymizing names]

The tenant denies that he has ever pounded on the door of tenant V and was shouting.

According to the second affidavit, it reads in part:

"...Friday the 11<sup>th</sup> of May in the morning I was in the back door stairwell area of [address of rental building] wiping down the doors and windows when [the tenant] approached and immediately starts telling me that I'm doing the cleaning incorrectly. He began shouting at me and calling me a "black bitch". He repeated this 4-5 times and all the time was getting more and more angry and ugly. At no time did he mention cigarettes or me owing him anything. He was just looking for a fight".

[Reproduced as written except for anonymizing names and rental unit address]

The tenant denied that he called [M] a “black bitch” and was yelling at him. The tenant claims that he came out of his rental unit to ask [M] for the cigarettes he was owed and stated “from what I recall I called him an ungrateful dumb \_\_\_\_.” The tenant did not complete the sentence after the word “dumb”.

The tenant was asked if the police have ever attended to discuss his behaviour in the rental building. The tenant confirmed that the police have attended and spoke to him five times but that he was not home for one of the times.

### Analysis

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

As the tenant disputed the 1 Month Notice within the 10 day timeline provided for under the *Act* the onus of proof then reverts to the landlord to prove that the 1 Month Notice is valid. The landlord is only required to prove one of the listed causes for the 1 Month Notice to be valid.

In the matter before me, I find the tenant’s testimony to be vague and completely contradictory with the first affidavit and second affidavit submitted in evidence and is contradictory with the two warning letters that the tenant confirmed having received. I find the tenant is simply disagreeing with the allegations to avoid eviction. I find there is sufficient evidence to support that that the tenant has acted aggressively and is more likely than not a bully towards staff and other tenants as claimed. I find there is no place for aggressive bullying behaviour in a tenancy and that the tenancy must end as a result. I afford more weight to the first and second affidavits submitted, the two warning letters and the testimony of the agent over that of the tenant. I am satisfied that the tenant has acted in a way that has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Given the above, I dismiss the tenant’s application to cancel the 1 Month Notice as I find the 1 Month Notice is valid. The effective vacancy date listed on the 1 Month Notice was June 30, 2018 which has passed, however the agent did not dispute that money has been paid for use and occupancy for July 2018. As a result, and pursuant to section 55 of the *Act*, I grant the landlord an order of possession effective **July 31, 2018 at 1:00 p.m.**

Conclusion

The tenant's application is dismissed.

I uphold the 1 Month Notice issued by the landlord. The tenancy ended on June 30, 2018 which was the effective vacancy date listed on the 1 Month Notice.

As per above, the landlord has been granted an order of possession July 31, 2018 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: July 12, 2018

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Residential Tenancy Branch