



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BR JHAJ HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC, OLC, FFT

Introduction

This hearing was held in response to the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to cancel a 1 Month Notice to End Tenancy for Cause dated September 28, 2018 ("1 Month Notice"), for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

Tenant BD ("tenant") and an agent for the landlord TSJ ("agent") attended the teleconference hearing. 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 this 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 they received the landlord's documentary evidence and that they had the opportunity to review the landlord's evidence prior to the hearing. The agent stated the he did not receive the tenants' documentary evidence. The tenant affirmed that they did not serve the landlord with their documentary evidence. As the tenants' documentary evidence was not served on the respondent in accordance with the Residential Tenancy Branch Rules of Procedure ("Rules"), the tenants' documentary evidence was excluded from the hearing. I find the tenants were sufficiently served in accordance with the *Act*.

Preliminary and Procedural Matters

At the outset of the hearing, the parties agreed that the incorrect landlord was named as a respondent. Therefore, by consent of the parties, the name of the corporate landlord

replaced the name of the agent as the respondent. This amendment was made pursuant to section 64(3) of the *Act*.

In addition, the parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- If the tenancy is continuing, should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on March 26, 2016. Originally, monthly rent of \$750.00 was due on the first day of each month and was increased during the tenancy to the current monthly amount of \$850.00 per month.

The tenant confirmed that he received the 1 Month Notice on September 28, 2018. The 1 Month Notice alleges five causes including the repeated late payment of rent and four other causes. The tenants disputed the 1 Month Notice on October 5, 2018. The effective vacancy date indicated on the 1 Month Notice is listed as October 31, 2018. The tenant confirmed that he received both pages of the 1 Month Notice and confirmed that the landlord had completed the "Details of Cause" section of the 1 Month Notice which was reviewed orally during the hearing.

During the hearing, the agent testified that the tenant paid the rent late as follows and the tenant's response is indicated in the table below:

Date rent due and amount owing	Date rent paid	Tenant's response
1. May 1, 2018 \$300.00 (10 Day Notice issued)	Few days after May 23, 2018	Agreed – referred to 10 Day Notice submitted in evidence
2. August 1, 2018 \$850.00	Paid within 1 weeks of	Not 100% sure

	August 1, 2018	
3. September 1, 2018 \$850.00	September 6, 2018	Not sure but sounds right
4. October 1, 2018 \$850.00	October 5 or 6, 2018	Not sure but sounds right
5. November 1, 2018 \$850.00	November 3, 2018	Agreed

The parties agreed that the landlord has not changed the date in which rent was due and that nothing in writing was ever signed between the parties that changed the rent due date from the first of each month.

The tenant stated that sometimes when he gets home on the first of the month the landlord is not home by the time he tries to pay rent. The tenant was advised during the hearing that paying rent by e-transfer or before the date the rent is due would address any issues about attempting to pay rent after getting home from work on the first day of each month. In addition, the parties were advised that the tenants' response does not address payments made after the first day of the month.

The parties agreed that the tenants have paid for use and occupancy of the rental unit for the month of November 2018.

Analysis

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

Tenant request to cancel 1 Month Notice – Residential Police Guideline #38 – Repeated Late Payment of Rent states that three late payments are the minimum number sufficient to justify a notice under this provision. As a result of evidence before me, the fact that the tenant could not recall specific dates he paid rent and that the tenant said “sounds right” to most of the dates presented by the landlord as indicated above, I find that the tenant paid his rent late on five occasions as described above. I also afford no weight to the tenant’s reasoning that by the time he arrived home from work on the first day of the month the landlord was not available to pay rent as that does not explain payments made after the first day of the month and also does not explain why the tenants did not attempt to pay rent before the day that it is due to avoid a problem with payments made before midnight on the first day of each month.

I did not find it necessary to consider further testimony regarding additional late payments of rent. I did not find it necessary to consider the remaining causes listed on the 1 Month Notice as the landlord succeeded in proving the first cause. Therefore, I **dismiss** the tenant's application to cancel the 1 Month Notice and I uphold the landlord's 1 Month Notice dated September 28, 2018 with an effective vacancy date of October 31, 2018 which has passed. Section 55 of the *Act* applies and states:

Section 55 of the *Act* applies and 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 to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

As the tenants continue to occupy the rental unit and I find the 1 Month Notice complies with section 52 of the *Act*, I **grant** the landlord an order of possession pursuant to section 55 of the *Act* **effective November 30, 2018 at 1:00 p.m.** as the parties confirmed that money has been paid for use and occupancy for November 2018. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I find the tenancy ended on October 31, 2018 and that the landlord has not reinstated the tenancy.

As I have granted an order of possession, I **dismiss** the remainder of the tenants' application without leave to reapply as the tenancy will not be continuing. I do not grant the tenants the recovery of the cost of the filing fee as the tenants' application fails.

Conclusion

The tenants' application is dismissed without leave to reapply. The 1 Month Notice issued by the landlord has been upheld.

The landlord has been granted an order of possession effective November 30, 2018 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The tenancy ended on October 31, 2018.

The filing fee is not granted.

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: November 9, 2018

Residential Tenancy Branch