



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BR JHAJ Holdings Ltd.
and [tenant name suppressed to protect privacy]

REVIEW DECISION

Dispute Codes: CNC, CNE, DRI, MNDC, FF

Introduction

In response to the tenant's application this hearing was originally scheduled to commence at 12:00 p.m. on September 23, 2014 by way of telephone conference call. While the landlord's agent attended, the tenant did not appear. By decision dated September 23, 2014, the tenant's application was dismissed and an order of possession was issued in favour of the landlord.

Subsequently, the tenant made an application for review consideration. In the result, by review consideration decision dated October 01, 2014, the tenant's application was allowed. In the review consideration decision the Arbitrator ordered as follows:

The decision dated September 23, 2014 is suspended pending a Review Hearing on the existence of a notice to end tenancy issued for cause and end of employment only. The remaining issues originally filed by the tenant remain dismissed without leave to reapply.

The review hearing was scheduled to commence at 1:00 p.m. on November 19, 2014. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to cancellation of a notice to end tenancy for cause and notice to end tenancy for end of employment.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began on August 01, 2013. Monthly rent is due and payable in advance on the first day of each month. Presently, the monthly rent is \$600.00. Neither a security

deposit nor a pet damage deposit was collected. It is understood that a move-in condition inspection report was not completed.

The parties agree that a 10 day notice to end tenancy for unpaid rent in the amount of \$300.00 was issued by date of July 18, 2014, and that the notice was served by way of posting on the unit door on that same date. A copy of the notice is not in evidence. Pursuant to section 90 of the Act which addresses **When documents are considered to have been received**, as the notice was served by posting on the unit door on July 18, 2014, it is deemed to have been received 3 days later on July 21, 2014.

Pursuant to section 46(4) of the Act which addresses **Landlord's notice: non-payment of rent**, the tenant had 5 days to either pay the full amount of outstanding rent, or to dispute the notice by filing an application for dispute resolution. In the circumstances of this case, while the tenant filed an application to dispute a notice to end tenancy on July 21, 2014, she did not specifically identify her wish to cancel a notice to end tenancy for unpaid rent (CNR). Rather, she applied for cancellation of a notice to end tenancy for cause (CNC), and a notice to end tenancy for end of employment (CNE).

Further, the tenant's payment of overdue rent of \$300.00 did not occur until July 30, 2014, which I find is outside the statutory 5 day period available after the deemed date of her receipt of the notice on July 21, 2014. The fifth day was July 26, 2014. As for the current status of rent, the parties agree that it is paid in full to November 30, 2014.

During the hearing the parties undertook to resolve the dispute concerning an end date to tenancy.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.gov.bc.ca/landlordtenant

Section 63 of the Act speaks to the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to a resolution and it was specifically agreed as follows:

RECORD OF SETTLEMENT

- that the tenant and all other occupants will vacate the unit by no later than **Wednesday, December 31, 2014**, and that an **order of possession** will be issued in favour of the landlord to that effect.

Section 82 of the Act addresses **Review of director's decision or order**, and provides in part:

82(2) The director may conduct a review

(c) by holding a new hearing.

(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Following from all of the above, the original decision and order dated September 23, 2014 are hereby set aside.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective by no later than **Wednesday, December 31, 2014**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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 20, 2014

Residential Tenancy Branch

