



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on October 9, 2018, wherein the Tenants requested an Order canceling a 1 Month Notice to End Tenancy for Cause issued on September 25, 2018 (the "Notice") and to recover the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on November 19, 2018.

Only the Landlord's Agent, M.B., called into the hearing. She gave affirmed testimony and was provided the opportunity to present the Landlords' evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 11:14 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Agent and I were the only ones who had called into this teleconference.

M.B. stated that the Tenants appear to be in the rental unit, however, neighbours have reported seeing moving boxes outside of the unit.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Tenants entitled to recover the filing fee paid?

## Background and Evidence

*Residential Tenancy Branch Rules of Procedure*—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenants applied for dispute resolution and are the Applicants, the Landlord presented their evidence first.

Provided in evidence was a copy of the residential tenancy agreement confirming that this tenancy began February 1, 2017. The Tenants were to pay \$1,650.00 per month on the first of the month.

The reasons cited on the Notice were that the Tenants were repeatedly late paying rent. M.B. testified that the Tenants were late April, May, June, July, August and September 2018. A copy of the tenant ledger was also provided in evidence which confirmed these late payments.

The Landlord's Agent testified that the Tenants failed to pay rent for October and November 2018 such that the sum of \$3,300.00 is outstanding. The Landlord confirmed that they had a further hearing on December 14, 2018 at which time the Landlord is seeking an Order of Possession and Monetary Order for unpaid rent. The file number for that hearing is included on the unpublished cover page of this my Decision.

## Analysis

Hearings before the residential tenancy branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. Rules 7.1 and 7.3 of the provide as follows:

### **Commencement of Hearing:**

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

### **Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the Applicant Tenants did not attend the hearing by 11:14 a.m., and the Landlord's Agent appeared and was ready to proceed, **I dismiss the Tenants' claim without leave to reapply.**

Section 55 of the *Residential Tenancy Act* provides as follows:

**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.

I have reviewed the Notice and confirm it complies with section 52 of the *Act*. As I have dismissed the Tenants' Application, I grant the Landlord an Order of Possession effective **two days** after service upon the Tenants. 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, except as 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 19, 2018

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Residential Tenancy Branch