



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WEST FRASER HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on May 7, 2018.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Preliminary and procedural matter

In this case, the tenant CR has submitted documents in support of their application; however, the last name in those documents is different from what is on the tenants’ application.

As the tenant referred to the co-tenant RR, as their boyfriend in the hearing, rather than husband, I am not satisfied that the tenant CR has given their correct legal name. Therefore, I find it appropriate to add the last name the tenant submitted in the submissions as an also known as (aka) in the style of cause.

Issue to be decided

Should the Notice be cancelled?

Background and Evidence

Neither party provided a copy of the Notice. The parties agreed that the tenants received the 10 Day Notice to End Tenancy for Unpaid Rent on May 7, 2018. The Notice indicates that the tenants failed to pay rent for April and May 2018. The parties agreed the notice was completed in accordance with the Act, with an effective vacancy date of May 17, 2018.

The parties agreed that the tenancy commenced on March 1, 2018. Rent in the amount of \$1,495.00 was payable on the first of each month. The tenants paid a security deposit of \$747.50.

The tenant testified that their bank account was frozen by the bank as someone had attempted to access their account. The tenant testified that they informed the landlord.

The tenant testified that they took out the cash from another bank account that they had for April and May 2018, rent and placed the cash in the landlord's drop box. The tenant later stated that their boyfriend gave them the cash, as they were asked why they did not provide a copy of those bank statements.

The tenant testified that even though they knew there was a problem with dropping off cash for April and May rent that they continued to drop of rent for June and July 2018, in cash because the landlord would not respond.

The landlord's agent testified that an automatic debit was setup when the tenancy commenced. The landlord stated that the debits were returned due to insufficient funds.

The landlord's agent testified that they have not received any rent from the tenants except for the first month of the tenancy. The agent stated that they have asked the tenants to provide proof from the bank that there account was frozen and bank records to support they had rent money; however, none were provided.

The landlord's agent testified that they also have a camera at the drop box and there was no video footage of the tenants dropping of anything in the box. The agent stated that they also asked the tenant to provide specific dates; however, they did not.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

...

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

Under the legislation the tenants may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenants had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

In this case, the rent payments were setup as an automatic withdraw from the tenants account. The tenant alleged there account was frozen because of someone trying to access it. The tenants provided no evidence of this, such a letter from the bank.

The evidence of the tenant was that they informed the landlord's agent of this and place cash for April and May 2018, rent in the drop box. The landlord's agent denied any such payments were received.

In this case, the onus is on the tenants to prove rent was paid on the balance of probability. The tenants provided no documentary evidence such as bank statements to prove they had the money and that it was taken out of their accounts. Simply saying they put cash in a drop box is not sufficient.

Further, I do not find the tenant credible as they changed their testimony when they were questioned from taking it out of their second bank account, to that their boyfriend

gave them the money in cash. I find it more likely than not that the tenant is fabricating a story.

Further, the drop box is monitored by video cameras, the evidence of the landlord that the tenants were never were seen putting anything in the box.

Additionally, the evidence of the tenant was that they continued to put cash in the drop box for rent for June and July 2018, even when the landlord had already informed them that rent was not received. The evidence of the tenant was they did this because the landlord would not respond to them. I find this unreasonable, the evidence of the tenant was that they had another bank account and they simply could have provided there banking information to the landlord, when the alleged their account was frozen.

Based on the above, I find the tenants have failed to prove rent was paid. I find the Notice issued on May 7, 2017, is valid. Therefore, I dismiss the tenants' application without leave to reapply.

The tenant is cautioned providing false evidence at a hearing can have serious consequences.

As the tenants' application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

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.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the

Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession.

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: July 06, 2018

Residential Tenancy Branch