



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: CNC

Introduction

This hearing was conducted based on 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 February 28, 2022 (1 Month Notice). The filing fee was waived for this application.

Tenant, CE (tenant) and an agent for the landlord, JB (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 Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The agent confirmed that they received the tenants' application and documentary evidence and that they had the opportunity to review the tenants' evidence prior to the hearing. The agent confirmed that they did not serve the tenants with any documentary evidence. I find the landlord was sufficiently served in accordance with the Act.

Preliminary and Procedural Matter

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issue to be Decided

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

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 15, 2020 and converted to a month-to-month tenancy after August 31, 2021. Monthly rent is \$1,175.00 per month and is due on the first day of each month.

The tenant confirmed that they received the 1 Month Notice on February 28, 2022. The 1 Month Notice alleges 1 cause, the repeated late payment of rent. The 1 Month Notice contains an incorrect effective vacancy date of March 21, 2022, which I will address later in this Decision.

The agent testified regarding the following:

1. December 2021 rent paid on January 11, 2022
2. January 2022 rent paid on January 24, 2022.
3. February 2022 rent full amount still not paid, owes \$355.00
4. March, April, May and June 2022 rent not paid at all.

The tenant blamed the landlord that they are cashing cheques when the tenant wanted to pay via e-transfer. The tenant was asked if they paid by e-transfer for March, April, May or June and the tenant admitted they did not. The landlord testified that both cheques for May and June 2022 “bounced” as they were returned as NSF (non-sufficient funds) from the bank.

Analysis

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

RTB Policy 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 facts before me I find that the tenants paid their rent late on at least three occasions before the 1 Month Notice was issued and 4 occasions since being served with the 1 Month Notice, being March, April, May and June of 2022.

Therefore, I find it is not necessary to consider further testimony regarding additional late payments of rent. I find the landlord succeeded in proving the only cause.

Therefore, **I dismiss** the tenants’ application to cancel the 1 Month Notice and I uphold

the landlord's 1 Month Notice dated February 28, 2022. Section 53 automatically corrects an effective vacancy date that is not correct as is in the case before me. March 21, 2022 corrects to March 31, 2022. 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.

[emphasis added]

I have reviewed the 1 Month Notice and have determined that it complies with section 52 of the Act. Therefore, **I grant** the landlord an order of possession pursuant to section 55 of the Act **effective two (2) days after service on the tenants** as the effective vacancy date of the 1 Month Notice has already passed.

The tenancy ended on March 31, 2022, which was the corrected effective vacancy date as indicated above.

Conclusion

The tenants' application to cancel the 1 Month Notice to End Tenancy for Cause has been dismissed. The 1 Month Notice issued by the landlord has been upheld and is valid.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia. Should the tenants fail to vacate the rental unit, the tenants are cautioned that they may be liable for all costs related to hiring a bailiff to remove them as the tenancy ended March 31, 2022.

The decision will be emailed to the parties. The order of possession will be emailed to the landlord only for service on the tenants.

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: June 27, 2022

Residential Tenancy Branch