



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding West Fraser Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, RP, PSF, OLC**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- cancellation of the landlords’ One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47
- for an order requiring the landlord to make repairs to the property pursuant to section 32 of the Act
- for an order to provide services or facilities required by the tenancy agreement or law pursuant to section 62 of the Act
- for an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act

While the respondent landlord’s agent attended the hearing by way of conference call, the applicant tenants did not, although I waited until 9:40 am in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 am. The landlord’s agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rule 7.1 of the Rules of Procedure provides as follows:

7.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord was affirmed.

The landlord testified that the One Month Notice dated January 17, 2023 was posted to the tenants' door on January 17, 2023. The landlord provided proof of service RTB Form 34 in evidence. Pursuant to section 88 and 90 of the Act the tenants are deemed to have been served with this notice in accordance with the Act on January 20, 2023.

The landlord further testified that their evidence was sent to the tenants by registered mail on April 15, 2023. The landlord provided Canada Post receipts and tracking numbers in evidence as proof of service. Based on sections 88 and 90 I find the tenants deemed served with the landlord's materials on April 20, 2023.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenants? Is the landlord entitled to an order of possession?
2. Are the tenants entitled to an order requiring the landlord to make repairs?
3. Are the tenants entitled to an order requiring the landlord to provide services or facilities as required by the tenancy agreement or law?
4. Are the tenants entitled to an order requiring the landlord to comply with the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy commenced August 5, 2022 on a fixed term until July 31, 2023. Rent is \$1,250.00 per month. The landlord holds a security deposit of \$625.00. The tenants still occupy the rental unit.

The landlord testified that the rental property is non-smoking, and the tenants have been smoking in their rental unit despite warnings from the landlord. There have been complaints from other occupants. The landlord stated on the One Month Notice that the reason for the notice was that the tenants were jeopardizing the health, safety, or a lawful right of other occupants. The landlord provided the following evidence:

Smoking Issues. – 12 No smoking Signs in the interior & exterior of the building.

- When the tenants moved in August 2022, it was made very clear by me, the property manager & our building manager that this was a NO SMOKING Building.
- They were advised that there may be a few tenants that smoke in their suite, they have been grandfathered & they will continue to smoke.
- Numerous complaints were received from the neighbours around suite 214 that the smoke was affecting their asthma.
- We have talked to the tenants on several occasions not to smoke in their suite. The last conversation in January 2023 regarding this matter was met with little compliance.

The tenants did not attend.

Analysis

As the tenants did not attend their claim is dismissed in its entirety without leave to reapply. However, based on *M.B.B. v Affordable Housing Charitable Association*, 2018 BCSC 2418 (CanLII), I must still consider the validity of the landlord's notice.

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenants apply to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the One Month Notice served on the tenants.

Based on the evidence of the landlord, I find that they have established the reason to end the tenancy listed in the One Month Notice. The One Month Notice meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the One Month Notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenants' application. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession effective May 31, 2023 at 1:00pm.

Conclusion

The landlord is granted an order of possession which will be effective May 31, 2023 at 1:00 pm. The order of possession must be served on the tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: May 17, 2023

Residential Tenancy Branch