



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF, CNC

This hearing was convened in response to an application by the Tenant and an application by the Landlord.

- The Landlord applied on May 10, 2017 for an order of possession pursuant to section 55 of the Act and an order for the recovery of the filing fee pursuant to section 72 of the Act; and
- The Tenant applied on May 16, 2017 for an Order cancelling a notice to end tenancy pursuant to section 47 of the Act.

Both Parties appeared and confirmed that the Tenant moved out of the unit and returned the keys to the Landlord. The Landlord confirms that on May 9, 2017 a one month notice to end tenancy was served to the Tenant in person.

Section 47(4) of the Act provides that a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Section 55(2) of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where, inter alia, a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. As the Landlord made its application the day after it served the notice to end tenancy, I find that the Landlord

made its application too early. For this reason I decline to award the Landlord with recovery of the filing fee.

As the Tenant has moved out of the unit and the Landlord has the keys to the unit I find that the Landlord has possession of the unit and therefore does not require an order of possession. I therefore dismiss the claim for an order of possession and in effect, the application is dismissed in its entirety. As the Tenant has moved out of the unit I dismiss the Tenant's application to dispute the notice to end tenancy.

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: June 28, 2017

Residential Tenancy Branch