



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on September 2, 2021, under the *Residential Tenancy Act* (the Act), seeking:

- An Order of Possession for the rental unit pursuant to section 55(2)(a) of the Act, because the Tenant has given written notice to end the tenancy; and
- Recovery of the \$100 filing fee pursuant to section 72(1) of the Act.

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on January 13, 2022, and was attended by the Landlord L.H. (the Landlord) and the Tenant, both of whom provided affirmed testimony. As the Tenant acknowledged receipt of the Notice of Dispute Resolution Proceeding Package from the Landlords, which included a copy of the Application and the Notice of Hearing, and raised no concerns with regards to the date or method of service, I therefore find that the Tenant was sufficiently served for the purposes of the Act and the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the *Act* and the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary matters

As it was evident from the Landlord's testimony at the hearing, and some of the documentary evidence before me, that the Landlord may actually be seeking to end the tenancy under either section 46 or 55(2)(c) of the *Act*, rather than section 55(2)(a) of the *Act*, I provided the parties with some general information regarding ending a tenancy for cause and seeking possession of a rental unit on the basis of a move-out clause, pursuant to sections 44(1)(b) and 97(2)(a.1) of the *Act*, section 13.1 of the regulation, and Residential Tenancy Policy Guideline #30.

I also provided the parties with some general information regarding the rights and obligations of landlords and tenants under sections 28 and 29 of the *Act*, at the request of the parties.

Despite the above, and pursuant to rule 6.2 of the Rules of Procedure, the hearing proceeded based on the actual Application filed by the Landlord, which was an application for possession of the rental unit by the Landlord pursuant to section 55(2)(a) of the *Act*, because the Tenant gave notice to end the tenancy. Although neither party requested an amendment to the Application at the hearing, I declined to grant one on my own initiative to include either an Order of Possession for the Landlord based on a One Month Notice to End Tenancy for Cause issued pursuant to section 47 of the *Act*, or an Order of Possession for the Landlord pursuant to section 55(2)(c) of the *Act*, as I did not find that the circumstances set out under rule 4.2 of the *Act* applied.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 55(2)(a) of the *Act*, because the Tenant has given written notice to end the tenancy?

Is the Landlord entitled to recovery of the filing fee pursuant to section 72(1) of the *Act*?

Background and Evidence

The parties agreed that the Tenant had not served the Landlord with a notice to end tenancy. At the hearing the Landlord stated that they were seeking to end the tenancy because they had served a self-authored notice to end tenancy on the Tenant, referred to as the “Notice to Quit” and because the Tenant had agreed in the tenancy agreement to vacate the rental unit at the end of the tenancy.

Analysis

Section 55(2)(a) of the *Act* states that a landlord may request an order of possession of a rental unit by making an application for dispute resolution if a notice to end the tenancy has been given by the tenant.

At the hearing the parties agreed that the Tenant had not provided the Landlord with a notice to end tenancy. As a result, I find that the Landlord is not entitled to an Order of Possession pursuant to section 55(2)(a) of the *Act*, and I therefore dismiss their Application without leave to reapply. As the Landlord was unsuccessful in their Application, I decline to grant them recovery of the filing fee.

Conclusion

The Landlords’ Application is dismissed in its entirety, without leave to reapply.

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: January 13, 2022

Residential Tenancy Branch