



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenants on November 6, 2021, under the *Residential Tenancy Act* (the *Act*), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice).

The hearing was convened by telephone conference call at 9:30 A.M. (Pacific Time) on December 16, 2021, and was attended by the Landlords, who provided affirmed testimony. The Tenants did not attend. The Notice of Dispute Resolution Proceeding states the date and time of the hearing, that the hearing will be conducted by telephone conference call, and provides the phone number and access code for the hearing. It also instructs participants that they are to call into the hearing themselves no more than five minutes before the start of the hearing. I confirmed that the details shown in the Notice of Dispute Resolution Proceeding were correct and I note that the Landlords were able to attend the hearing promptly using the information contained in the Notice of Dispute Resolution Proceeding package served on them by the Tenants. The Landlords attended the hearing at the scheduled time, ready to proceed, and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Although the line remained open for 36 minutes, neither the Tenants nor an agent acting on their behalf appeared to provide evidence or testimony for my consideration.

The Landlords 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 Landlords were asked to refrain from speaking over myself and one another and to

hold their questions and responses until it was their opportunity to speak. The Landlords 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.

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

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlords and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. As neither the Tenants nor an agent acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenants' Application, I therefore dismiss the Tenants' Application without leave to reapply.

Having made the above finding, I will now turn my mind to whether the Landlords are entitled to an Order of Possession pursuant to section 55(1) of the *Act* or a Monetary Order for unpaid rent pursuant to section 55(1.1) of the *Act*.

The 10 Day Notice in the documentary evidence before me is signed but not dated. As a result, I find that it does not comply with section 52(a) of the *Act*. As compliance with section 52 is a requirement under both section 55(1)(a) of the *Act* for issuance of an Order of Possession and section 55(1.1) for issuance of a Monetary Order for unpaid rent, I therefore find that the Landlords are not entitled to either an Order of Possession for the rental unit or a Monetary Order for unpaid rent as a result of the Tenants' Application seeking cancellation of the 10 Day Notice. In any event, I find that an Order of Possession was not necessary, as the Landlords stated at the hearing that the Tenants had already vacated the rental unit and returned the keys, and that two days prior to the hearing the Tenants had emailed them asking them to dispose of any possessions remaining in the rental unit. The Landlords remain entitled to file an Application for Dispute Resolution with the Residential Tenancy Branch (Branch) seeking recovery of any unpaid or lost rent, should they wish to do so.

Conclusion

The Tenants' Application is dismissed without leave to reapply, and I decline to grant the Landlords either a Monetary Order or an Order of Possession for the rental unit, as set out above, as a result of the Tenants' Application as the 10 Day Notice does not comply with section 52 of the *Act*.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

Dated: January 5, 2022

Residential Tenancy Branch