



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacifica Housing Advisory Association
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPM, FFL (Landlord)
 OLC, PSF, LRE, OT (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Landlord filed their application November 23, 2021 (the “Landlord’s Application”). The Landlord applied as follows:

- For an Order of Possession based on a Mutual Agreement to End a Tenancy (the “Mutual Agreement”)
- For reimbursement for the filing fee

The Tenant filed their application January 13, 2022 (the “Tenant’s Application”). The Tenant applied as follows:

- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law
- To suspend or set conditions on the Landlord's right to enter the rental unit
- To dispute the Mutual Agreement

M.L., A.M. and E.H. (the “Agents”) appeared as agents for the Landlord. The Tenant appeared at the hearing with V.J. as their Advocate. The Tenant and V.J. appeared at the hearing 7 minutes late. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Agents testified that the hearing package and evidence for the Landlord's Application was served on the Tenant in person February 25, 2022.

The Tenant and V.J. acknowledged receipt of the hearing package and evidence for the Landlord's Application in person February 25, 2022. V.J. took issue with late service of the hearing package and evidence. V.J. submitted that the Tenant has not had time to prepare for the hearing and there was considerable evidence provided by the Landlord.

I acknowledge that the Landlord did not comply with rule 3.1 of the Rules in relation to the timing of service of the hearing package or their evidence. Further, the Landlord did not comply with rule 3.14 of the Rules in relation to the timing of service of their evidence. However, I do not accept that the Tenant did not have time to prepare for the hearing because the Tenant's Application was set for a hearing on the same date and the Tenant applied to dispute the Mutual Agreement. Therefore, the Tenant had since January 13, 2022, when they disputed the Mutual Agreement, to prepare for the hearing. Further, the Landlord's evidence relevant to the Mutual Agreement is not considerable. After a discussion about the above with the Tenant and V.J., V.J. confirmed the Tenant was prepared to move forward with the hearing.

The Agents testified that they did not receive the hearing package and evidence for the Tenant's Application. V.J. acknowledged the hearing package and evidence were not served on the Landlord. The Tenant was required to serve the hearing package and evidence on the Landlord pursuant to rules 3.1 and 3.14 of the Rules. Given the hearing package was not served on the Landlord, the Tenant's Application is dismissed with leave to re-apply. This decision does not extend any time limit set out in the *Residential Tenancy Act* (the "Act").

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence pointed to during the hearing and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Mutual Agreement?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started April 01, 2020 and is a month-to-month tenancy.

The Mutual Agreement was submitted as evidence. The Mutual Agreement is to end the tenancy October 29, 2021. The Mutual Agreement is signed for the Landlord and by the Tenant.

The Tenant and V.J. testified as follows. The Landlord presented the Tenant with several eviction notices which were withdrawn. The Landlord then presented the Tenant with the Mutual Agreement. The Tenant has a grade six literacy level. The Tenant did not understand the Mutual Agreement. The Landlord told the Tenant they had 24 hours to sign the Mutual Agreement or the Landlord would evict them. The Tenant did not sign the Mutual Agreement and the documents submitted show the Tenant's signature on the Mutual Agreement is different from other documents.

The Agents testified as follows. The Tenant did sign the Mutual Agreement. K.L., a senior manager for the Landlord, was present when the Mutual Agreement was signed. K.L. had a conversation with the Tenant and explained what the Tenant was signing and how the Mutual Agreement worked which is shown in the Landlord's evidence at the document labelled "A 10 B". The Tenant also had a co-tenant present. The Landlord was not concerned that the Tenant did not understand the Mutual Agreement.

In reply, the Tenant and V.J. denied that a co-tenant was present when the Mutual Agreement was provided to the Tenant.

Analysis

Pursuant to section 44(1)(c) of the *Act*, a tenancy can end when the landlord and tenant agree in writing to end the tenancy.

I accept that the Tenant signed the Mutual Agreement. I acknowledge that the Tenant's signature is different on the Mutual Agreement than other documents submitted; however, the Tenant's signature is different from one document to another throughout the documents submitted and therefore I do not find it significant that it is different on the Mutual Agreement.

However, I accept that the Tenant did not understand the Mutual Agreement when they signed it. I note that the Landlord acknowledges in their written materials that the rental unit building is "for individuals with concurrent mental health and/or addiction barriers." I also note that the Tenant had V.J. appear with them at the hearing to assist them with this matter. I accept that the Tenant has a grade six literacy level as stated by V.J. I have read the Landlord's evidence at "A 10 B". The note I see about the Mutual Agreement in this document is from October 28, 2021 and states that the writer and K.L. "had a conversation with [the Tenant] regarding his Mutual Agreement move out date tomorrow, with witness present to support [the Tenant] (emphasis added)." I do not see where in the notes it talks about the signing of the Mutual Agreement. It is the circumstances around the signing of the Mutual Agreement that is at issue.

In the absence of further compelling evidence about the signing of the Mutual Agreement, I accept that the Tenant did not understand the Mutual Agreement and therefore I decline to uphold the Mutual Agreement.

The Landlord's request for an Order of Possession based on the Mutual Agreement is dismissed without leave to re-apply.

The Landlord is not entitled to reimbursement for the filing fee given they have not been successful in the Landlord's Application.

Conclusion

The Tenant's Application is dismissed with leave to re-apply. This decision does not extend any time limit set out in the *Act*.

The Landlord's Application is dismissed without leave to re-apply.

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

Dated: March 15, 2022

Residential Tenancy Branch