



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COTTYN CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, CNE, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants May 02, 2022 (the "Application"). The Tenants applied as follows:

- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To dispute a One Month Notice to End Tenancy for End of Employment
- To recover the filing fee

The Tenants appeared at the hearing. Nobody appeared at the hearing for the Landlord. The hearing proceeded for 10 minutes and nobody for the Landlord called into the hearing during this time.

The Tenants advised at the outset of the hearing that they moved out of the rental unit at the end of June 2022. The Tenants acknowledged their claims are moot given they have moved out of the rental unit.

Rule 5.0.1 of the Rules of Procedure (the "Rules") states:

Withdrawing an application to dispute a notice to end tenancy

Where a tenant has applied to dispute a landlord's notice to end tenancy, the applicant tenant requires the written consent of the landlord to withdraw their application.

Given rule 5.0.1 of the Rules, I asked the Tenants about service of the hearing package on the Landlord. The Tenants advised that the hearing package was not served on the Landlord.

The Tenants were required to serve the hearing package on the Landlord pursuant to section 59(3) of the *Residential Tenancy Act* (the “*Act*”) and rule 3.1 of the Rules. Given the Tenants did not serve the hearing package on the Landlord, the Application is dismissed with leave to re-apply, other than the request to recover the filing fee which is dismissed without leave to re-apply. However, I note that the Tenants claims are moot now that they have moved out of the rental unit.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I decline to issue the Landlord an Order of Possession pursuant to section 55(1) of the *Act* because the Landlord did not appear at the hearing to seek one and because the Tenants have moved out of the rental unit and therefore the Landlord does not require an Order of Possession.

Conclusion

The Application is dismissed with leave to re-apply, other than the request to recover the filing fee which 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: August 30, 2022

Residential Tenancy Branch