

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: OPL, MNDC, FF

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- An order of possession for landlord's use of property, pursuant to Section 55;
- A monetary order for rent, pursuant to Section 67 and to recover the cost of filing the Application for Arbitration pursuant to Section 72.

The notice of hearing dated February 13, 2009 was served on the tenant on February 18, 2009, in person. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

At the start of the hearing, the landlord stated that the tenant had moved out on February 28, 2009 and therefore the landlord withdrew the portions of her application that dealt with an order of possession and a monetary order for rent. However, the landlord stated that she wanted to pursue her application for the recovery of the filing fee.

Issues to be decided

- Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on June 01, 2001 on a month to month basis. The monthly rent is \$560.00 due on the first of each month. On December 30, 2008, the landlord served the tenant with a notice to end tenancy for landlord's use of property (section 49), effective February 28, 2009.

The tenant moved out on February 28, 2009. The landlord stated that she applied for dispute resolution on February 13, 2009 to obtain an order of possession, for use in the event that the tenant did not move out on February 28, 2009. The landlord also applied for a monetary order for rent for March for the same reason.

Analysis

I find that the landlord's application for an order of possession was premature and since the tenant moved out on the effective date of the notice to end tenancy, the landlord's application was unnecessary. Therefore, the landlord is not entitled to the recovery of the filing fee.

Conclusion

The landlord's application is dismissed.

Dated April 07, 2009.

Dispute Resolution Officer