

DECISION

Dispute Codes OPR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession and to recover the cost of the filing fee from the tenant.

The landlords appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

No one appeared on behalf of the tenant.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession under Section 55 of the *Residential Tenancy Act* for Cause and is the landlord entitled to a Monetary Order to recover the cost of the filing fee under section 72 of the *Act*?

Preliminary Issues

The male landlord testified that the tenant vacated the rental unit on June 1, 2009 and so he is withdrawing his application for an Order of Possession.

The male landlord submitted evidence the day before the hearing and requested that the Dispute Resolution Officer amend the landlord's application to include a monetary claim.

The male landlord testified that he did not serve the respondent tenant with the evidence submitted late and did not serve the respondent tenant with an amended application for dispute resolution.

Analysis

Request for an Order of Possession The landlord has withdrawn his request for an Order of Possession.

Request to Amend Application and Accept Late Evidence. To find in favour of the landlord's request to amend an application to include a request for a monetary claim, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. Based on the above, I find that the respondent tenant has not been given proper notice to defend his rights

and I hereby dismiss the landlord's request to amend the application to add a monetary claim, with leave to reapply.

Section 11.5 of the *Residential Tenancy Branch Rules of Procedure* states that a Dispute Resolution Officer may refuse to accept evidence that has not been provided to the other party, in advance of the dispute resolution proceeding, if the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice. Based on the aforementioned I hereby dismiss the landlord's request to accept late evidence that has not been served to the respondent tenant.

Recovery of the filing fee – As the landlords have not been successful with their application I dismiss the landlord's claim to recover the cost of the filing fee from the tenant.

Conclusion

The request for an Order of Possession has been withdrawn.

I HEREBY DISMISS the landlord's request to recover the cost of the filing fee and to amend the application with 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: June 05, 2009.

Dispute Resolution Officer