



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

Issue to be Decided

Is the tenant entitled to recovery of the filing fee.

Background and Evidence

The parties agreed that on May 26, 2011, the tenant was served with a two month notice to end tenancy (the "Notice"). Although the landlord told the tenant that a caretaker would be moving into the rental unit, the Notice did not identify a reason for ending the tenancy.

The tenant testified that he realized that the Notice was incomplete and waited until June 3 to dispute the Notice because he knew that when the landlord was aware of the deficiency, she would serve a second, correct notice. The tenant stated that he knew that this delay would give him an additional month in the rental unit. This is in fact what occurred. The tenant filed his application for dispute resolution on June 3 and upon receiving the application, the landlord served a new notice to end tenancy.

At the hearing the landlord advised that she wished to withdraw the Notice and rely on the second notice to end tenancy. The only issue which remained, therefore, was whether the tenant was entitled to recover the \$50.00 filing fee.

The landlord argued that she should not be held responsible for the filing fee because the tenant did not draw her attention to the deficiency but chose to proceed directly to dispute resolution.

Analysis

Because the tenant was verbally advised that the caretaker would be moving into the rental unit, I am not persuaded that the tenant was in any way confused about the intent of the Notice. Rather, he filed his application in a strategic move to delay the end of the tenancy. I find that the tenant should bear the cost of the filing fee as it was entirely possible to avoid the necessity of the application.

Conclusion

The tenant will bear the cost of the filing fee.

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 24, 2011

Residential Tenancy Branch