



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR, MNR, MNSD, FF

DECISIONS AND REASONS

This hearing dealt with the applications for Dispute Resolution by the landlord under the Residential Tenancy Act (the "Act").

The landlord filed an application for dispute resolution on January 30, 2012, seeking an order of possession of the rental unit based upon a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the tenant. The landlord served the Notice of Hearing and the Application to the tenant via personal delivery on February 2, 2012.

Thereafter, the landlord amended his original application, seeking additional remedy, including requesting an order of possession based upon a 10 Day Notice to End Tenancy for Unpaid Rent, a monetary order for unpaid rent, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The landlord testified that he did not serve the amended application upon the tenant as she had vacated the rental unit without notice.

The tenant did not appear at the hearing.

The landlord testified that as the tenant had vacated without notice, he no longer needed or requested an order of possession and presented that he wished to proceed on his request for a monetary order and for authority to retain the tenant's security deposit.

Residential Tenancy Branch Rules of Procedure allow an applicant to amend their application prior to the dispute resolution hearing, but require the applicant to serve the respondent the amended application at least five days prior to the hearing.

The only application the tenant received was the original application of the landlord, requesting an order of possession and for recovery of the filing fee. As I explained during the hearing, the tenant has never been informed of the landlord's request for a monetary order or for authority to retain the tenant's security deposit.

The Residential Tenancy Act, Rules of Procedure and principles of natural justice require that the respondent be informed of the nature of the claim and the monetary amount sought against them. This is one of the many purposes of the Application for Dispute Resolution and the Notice of Hearing. Without being served the amended application in a manner conforming to the Act and the Residential Tenancy Branch Rules of Procedure, the tenant/respondent would easily have any Decision or Order made against her overturned upon Review.

Conclusion

I find that the landlord served the original application and Notice of Hearing upon the tenant in a manner complying with the Act via personal delivery. The landlord presented that he no longer required an order of possession and therefore I have not considered that request. However I find that the landlord is entitled to recovery of the filing fee for the original application and I allow him to retain \$50.00 from the tenant's security deposit in satisfaction of his monetary claim.

Additionally as I find the tenant has not been served with the Notice of Hearing and Amended Application for Dispute Resolution in a manner complying with the Residential Tenancy Act and the Rules of Procedure, I **dismiss** the landlord's amended 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: February 16, 2012.

Residential Tenancy Branch