



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order of possession for the rental unit due to an alleged breach by the tenant of an agreement with the landlord and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue-The landlord filed an amended application for dispute resolution, in which the landlord additionally sought authority to retain the tenant's security deposit and a monetary order for unpaid rent in the amount of \$650.

During the course of the hearing, as these latter two issues were addressed, the tenant stated that the only application he received in connection with this hearing was the original application for an order of possession for the rental unit and for recovery of the filing fee.

I then inquired of the landlord as to whether he served the tenant with his amended application for dispute resolution and the landlord said that he did. As to the method of delivery, the landlord said he left his amended application on the tenant's porch. The tenant denied receiving the landlord's amended application.

Section 89 of the Act states that applications for dispute resolution must be served upon the other party, the tenant in this case, by leaving the documents with the other party, by registered mail to the other party's residence, or to the forwarding address provided by the other party if they are a tenant.

As the landlord failed to serve his amended application by the required methods as above, I dismiss the landlord's claim for a monetary order and for authority to retain the tenant's security deposit, with leave to reapply.

The hearing proceeded on the landlord's request for an order of possession for the rental unit and for recovery of the filing fee.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit and to recover the filing fee?

Background and Evidence

The landlord submitted documentary evidence that the parties had signed a mutual agreement that the tenant would vacate the rental unit by May 31, 2013 and the landlord contended that he did not, leading to filing for dispute resolution.

The parties agreed that the rental unit is now vacant as the tenant moved out on June 16, 2013, and the landlord agreed that he no longer required an order of possession for the rental unit.

Analysis

As the tenancy has now ended by the tenant's vacating the rental unit on June 16, 2013, I find that it was no longer necessary to proceed with the landlord's request for an order of possession for the rental unit. I therefore dismiss the landlord's request seeking an order of possession for the rental unit.

I find at the time the landlord filed his application for dispute resolution, the landlord's application had merit. I therefore allow the landlord recovery of his filing fee of \$50.

I direct the landlord to retain \$50 from the tenant's security deposit of \$300 in satisfaction of his monetary award for the filing fee.

Conclusion

The landlord's application for an order of possession for the rental unit is dismissed.

The landlord is granted recovery of the filing fee of \$50 and is directed to retain this amount from the tenant's security deposit.

The landlord's amended application for a monetary order and for authority to retain the tenant's security deposit is dismissed 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* and is being mailed to both the applicant and the respondent.

Dated: June 27, 2013

Residential Tenancy Branch