



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, PSF, LRE, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties admitted service of all relevant documents.

Preliminary Issue – Scope of Tenant's Application

At the hearing the tenant informed me that she vacated the rental unit on 12 January 2016.

I explained to the tenant at the hearing that it appeared to me that her application was moot. In particular, the remedy for cancellation of the 10 Day Notice would be the tenancy would continue; however, the tenant has vacated the rental unit and has not asked for an order of possession in the tenant's favour. Similarly there is now no need to set conditions

on the landlord's right to enter as the tenant no longer lives in the rental unit. Finally the landlord is could not be ordered to provide services or facilities under the tenancy agreement or the Act as the tenancy has now ended.

Borowski v Canada (Attorney General), [1989] 1 SCR 342 is the leading case on the doctrine of mootness:

The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. ...

While the Residential Tenancy Branch is not a court, it is bound by many of the same decision-making principles as the courts. In particular, I find that I am bound by the doctrine of mootness. In this case, there is no live controversy between the parties as there is no decision that I could make on the application that would result in anything more than a hypothetical exercise in whether the tenant would have been entitled to the remedy had she not vacated. On this basis, I decline to consider the tenant's application.

The tenant asks that I order that she recover her filing fee.

Subsection 72(1) permits an arbitrator to make a discretionary award of repayment of a filing fee from one party to another. Generally this repayment is ordered where a party has been successful on the merits of his or her application.

In this case, I have declined to consider the substantive issues in the tenant's application as they are moot. As such, the tenant has been successful on the merits of her application. On this basis, I decline to award the tenant recovery of her filing fee.

Conclusion

The tenant's application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 01, 2016

Residential Tenancy Branch

