



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

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

- an early end to this tenancy and an order of possession pursuant to section 56; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1115 in order to enable the tenants to connect with this teleconference hearing scheduled for 1100. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issue – Scope of Landlord's Application

At the hearing the landlord informed me that the tenants vacated the rental unit on or about 28 May 2016. I explained to the landlord at the hearing that it appeared to me that his application was moot as the tenancy had 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 landlord would have been entitled to the remedy had the tenants not vacated. On this basis, I decline to consider the landlord's application for an early end to tenancy and order of possession.

The landlord asks that I order that he recover his 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 landlord's application as they are moot. As such, the landlord has not been successful on the merits of his application. On this basis, I decline to award the landlord recovery of his filing fee.

Conclusion

The landlord'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: June 08, 2016

Residential Tenancy Branch