



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC LAT FF

Introduction

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

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend although the teleconference line remained open for approximately 10 minutes. The tenant attended this hearing and requested to withdraw most of his application, indicating that he no longer resided in the rental unit and therefore did not require an order that the landlord comply with the Act or that he receive authorization to change the locks. The application for these two remedies is therefore withdrawn. The tenant indicated that he still wished to proceed with his application to recover the filing fee.

Background and Evidence

The tenant testified that he brought this application because, from the time he moved in to the rental unit, he had fleas and other pests in his rental unit. He testified that the landlords did not take proper steps to address the matter, despite his numerous complaints. He testified that, after he paid for several pest control treatments out of his pocket, still had pests in the unit. Ultimately, the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use which the tenant accepted.

The tenant submitted that he did not seek any money beyond the filing fee in his application and that he believes he should be entitled to recover the \$100.00 filing fee for this application.

The landlord did not attend this hearing and submitted no materials in response to this application.

The landlord claimed that the tenant should be responsible for this filing fee as the landlord was forced to take steps in applying to end the tenancy and recover the rent as a result of the tenant's actions.

Analysis: Recovery of Filing fee

Section 72 of the Act addresses fees and monetary orders as a result of a dispute resolution hearing.

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) ... by one party to a dispute resolution proceeding to another party or to the director.

The doctrine of "mootness" is a general policy or practice that a court or tribunal may decline to decide a matter between parties that raises merely a hypothetical or abstract question. In *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 is the leading case on the doctrine of mootness and it states,

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 ... 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, I find that the tenant's application is moot in that the substantive issues of residence in the rental unit have been resolved. I further find that the end of the tenancy and therefore the resolution of the controversy between the parties results in this application for dispute resolution being moot.

While section 72(1) permits an arbitrator to make a discretionary award of repayment of a filing fee from one party to another, this repayment is ordered where a party has been successful on the merits of his or her application. As I have found that the tenant's application is moot, the tenant has not been successful on the merits of the application. On this basis, I decline to award the tenant recovery of the filing fee.

Conclusion

The tenant withdrew the application for an order that the landlord comply with the Act and/or that the tenant receive authorization to change the locks at the rental unit. I dismiss the tenant's application to recover the filing fee for this application.

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: September 6, 2016

Residential Tenancy Branch

