



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF, MNDC, MNSD, OLC

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, 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 landlord acknowledged receipt of evidence submitted by the tenant. The landlord did not submit any documentary evidence for this hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issues

At the outset of the hearing the tenant advised that he was only seeking to have the issue of the filing fee resolved as he and the landlord agreed that the tenancy would end by no later than 1:00 p.m. on March 31, 2017. As they have resolved that issue on their own I need not address the issue of the end of tenancy. The parties also advised that they now understand the compensation provision as per the notice and that the security deposit will be addressed at the end of the tenancy; accordingly I need not address those issues either.

Issue to be Decided

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on September 1, 2016 for a six month term and thereafter on a month to month basis. The monthly rent is 2200.00. At the outset of the tenancy the tenant provided a security deposit of \$1100.00.

The tenant gave the following testimony. On January 2, 2017 the landlord served the tenant with a two month Notice to End Tenancy for Landlords' Use of Property. The Notice to End Tenancy required the tenants to move out of the rental unit by March 3, 2017. The ground for the Notice was that the rental unit would be occupied by the landlord or the landlord's close family member. The tenant testified that he has no issue moving out but the effective date of the notice was wrong. The tenant testified that despite providing the landlord information that Section 53 of the Act allows incorrect effective dates to automatically change, the landlord cut off communication. The tenant testified that the correct date should be March 31, 2017. The tenant testified that the landlord provided a new notice on January 30, 2017 with the correct effective date. The tenant testified that he is seeking the recovery of his filing fee.

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The landlord gave the following testimony:

The landlord testified that due to his ailing father, he was unable to resolve the matter after the first notice was issued. The landlord testified that there was no ill will or malice meant by the incorrect date and that it was simply an error. The landlord testified that the tenant should have made more attempts to contact him and this hearing could have been avoided. The landlord testified that he agrees that the effective date of the notice is March 31, 2017 as per the Act and but the tenant should not be entitled to the recovery of the filing fee.

Analysis

I fully accept the landlords' submission that there was no vicious intent or ill will to serve a notice with an incorrect date. The landlord submits that the tenant could have gotten in contact with him and the matter would have been resolved. The tenants' response was that despite his efforts to contact the landlord; they didn't respond. When a landlord issues a notice under Section 49 of the Act, the tenant has fifteen days from receiving it in which to dispute it. The tenant made attempts to resolve it but to no avail.

The recovery of the filing fee under Section 72 of the Act is a discretionary amount that an Arbitrator can award. I find that as a result of the landlords' issuance of a notice with an incorrect effective date and the lack of communication within the legislated timeline, it required the tenant to file an application to address the matter. Based on the above I find that the tenant is entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenant has established a claim for \$100.00. I grant the tenant an order under section 67 for the balance due of \$100.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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, 2017

Residential Tenancy Branch