



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, FF

Introduction

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

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 11, 2017 ("10 Day Notice"), pursuant to section 66;
- cancellation of the 10 Day Notice, pursuant to section 46; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Tenant RS" did not attend this hearing which lasted approximately 23 minutes. Tenant EG ("tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that he had authority to represent tenant RS as an agent at this hearing (collectively "tenants").

At the outset of the hearing, both parties confirmed that an ex-parte direct request application was filed by the landlord against the tenant. The file number for that application appears on the front page of this decision. Both parties confirmed that an Adjudicator issued a decision, dated February 3, 2016, cancelling the landlord's 10 Day Notice that is the subject of this current application. Although neither party provided a copy of the previous decision or the 10 Day Notice, I was able to locate and confirm both documents in the online Residential Tenancy Branch ("RTB") system. I was able to confirm the details of the 10 Day Notice in that application and both parties agreed that it was the same 10 Day Notice as this current application, which had an effective move-out date of January 27, 2017, for \$1,100.00 in unpaid rent and \$150.74 in unpaid utilities. The landlord said that the notice was dated January 17, 2017 when she served it to the tenant, but the date on the actual notice is January 11, 2017, which is stated correctly in the Adjudicator's previous decision.

I advised the parties that because the tenants are seeking to cancel the same 10 Day Notice that was already cancelled in the landlord's previous direct request application, the issue was now moot. Consequently, I notified the parties that there was no need to proceed with the hearing on a moot issue.

The tenant said that he still wanted recovery of the \$100.00 application filing fee because the landlord did not notify him about the previous direct request decision until after he had filed his application and paid the filing fee. The landlord said that she told the tenant about the previous decision and he informed her that he had not filed his own application; she also claimed that the tenants filed their application late, after the five-day deadline to dispute the 10 Day Notice.

The tenants submitted their application on February 1, 2017 and it was processed on February 2, 2017. The direct request decision was issued on February 3, 2017, after the tenants filed their application.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this case, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application. The tenants must bear the cost of this filing fee.

Conclusion

The tenants' application for more time to make an application to cancel the 10 Day Notice and cancellation of the 10 Day Notice, is moot.

The tenants' application to recover the \$100.00 filing fee is dismissed without 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*.

Dated: March 03, 2017

Residential Tenancy Branch

