



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPB FF

Introduction:

Only the tenant attended the hearing and gave sworn testimony. He agreed a Mutual Agreement to End Tenancy was signed and said he vacated in accordance with it on June 14, 2017. There was no Notice to End Tenancy and the Landlord served him personally with the Application for Dispute Resolution. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to Sections 44 (1) (c) and 55 as the tenant has breached a term of the Mutual Agreement to End Tenancy by not vacating as agreed;
- b) A monetary order for a refund of compensation already paid to the tenant in consideration of them vacating;;
- c) A monetary order for unpaid rent; and
- d) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is the landlord entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

Background and Evidence:

Only the tenant attended and was given opportunity to be heard, to present evidence and to make submissions. The tenant explained that he was originally engaged to run the home as a Bed and Breakfast and was assured all the legal permits were in place. Subsequently, he discovered it was being operated illegally and the municipality got involved. He then became a tenant on October 1, 2016 paying rent of \$1500 a month. He said the landlord owes him compensation for rent he collected which was supposed to be paid to him and the landlord wanted him to move. They decided to sign a mutual

agreement to end Tenancy providing for compensation. According to the Mutual Agreement, he was to vacate on or before June 16, 2017 and he complied and vacated on June 14, 2017.

He said the landlord had filed this Application on June 6, 2017 although the Mutual Agreement provided that there would be no further dispute or hearing before the Residential Tenancy Branch. He said the landlord did promise to cancel this hearing but obviously did not.

In evidence is the Mutual Agreement to End Tenancy dated June 10, 2017. On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

I find no breach of the Mutual Agreement to End Tenancy. I find the tenant complied with the terms and the landlord prematurely filed this Application. I find insufficient evidence to support the landlord's allegation that the tenant owes him any money. I find the landlord filed the Application prematurely as he filed it before allowing the tenant to vacate according to the Mutual Agreement to End Tenancy.

Conclusion:

I dismiss the Application of the landlord in its entirety without leave to reapply. I find them not entitled to recover filing fees due to lack of success.

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: July 27, 2017

Residential Tenancy Branch