



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction and Preliminary Matter

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for an order of possession for the rental unit pursuant to a 1 Month Notice to End Tenancy for Cause and for recovery of the filing fee paid for this application. The landlord submitted a copy of the Notice.

The landlord attended the telephone conference call hearing; the tenant did not attend.

The landlord submitted that the tenants were served with her application for dispute resolution and notice of hearing by personal service; however, the landlord was unsure of the date. The landlord submitted that the service of the documents were within three days of filing her application, which occurred on May 23, 2019.

Based upon the submissions of the landlord, I find the tenants were served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenants' absence.

At the beginning of the hearing, the landlord confirmed that the tenants vacated the rental unit at the end of June 2019, and that as a result, an order of possession for the rental unit was no longer being requested. I have therefore amended the landlord's application to exclude a request for an order of possession for the rental unit.

Further, the landlord confirmed that she was still seeking recovery of the filing fee paid for this application.

Analysis and Conclusion

As to the landlord's request for recovery of her filing fee, I note that the effective end of tenancy date listed on the Notice issued to the tenant was May 31, 2019.

There was no evidence that the tenant had filed an application in dispute of the Notice and had until May 31, 2019 to vacate the rental unit. At the time of the landlord's application on May 23, 2019, it was not necessary to file an application as the effective end of tenancy date was later than the landlord's application.

As such, I find that it was not necessary for the landlord to file her application on May 23, 2019, as the application was premature at that point due to the effective end of tenancy on May 31, 2019. I therefore decline to award the landlord recovery of her filing fee.

Due to the above, I dismiss the landlord's application seeking recovery of the filing fee.

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 8, 2019

Residential Tenancy Branch