



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

In this dispute, the tenant sought to cancel a landlord's Notice to End Tenancy for Landlord Use of Property (the "Notice") under section 49 of the *Residential Tenancy Act* (the "Act"), and, recovery of the filing fee under section 72 of the Act.

The tenant applied for dispute resolution on November 14, 2019 and a dispute resolution hearing was held on January 6, 2020. The tenant attended the hearing, but the landlord did not.

The tenant testified that he served the Notice of Dispute Resolution Proceeding package (the "NDRP") on the landlord within a few days of filing his application. Based on the undisputed testimony of the tenant I find that the landlord was served with the NDRP in compliance with the Act.

I have reviewed evidence submitted that met the *Rules of Procedure* but have only considered evidence relevant to the preliminary issue of this application.

Preliminary Issue: Tenant Has Moved

The tenant explained that, not wanting to risk ending up with a 48-hour eviction notice (that is, an order of possession issued to the landlord) should he be unsuccessful at an arbitration hearing, he ended up moving to a new place. As such, the issue of whether the Notice ought to be cancelled is now rather moot.

That having been said, the landlord was served with the notice of hearing package and was legally required to attend the dispute resolution hearing but failed to do so.

In summary, while I dismiss the tenant's application based on the fact that the tenant has moved, I award the tenant the \$100.00 filing fee. He did, after all, attend the hearing, while the landlord did not.

As explained to the tenant during the hearing, the landlord has 15 days to either return the tenant's security and pet damage deposit, in full, (once the tenant provides the landlord with his forwarding address, in writing) or apply for dispute resolution. Failure to return both deposits may result in a doubling penalty under section 38(6) of the Act.

Further, the tenant explained that he is aware of section 51(2), under which a landlord may be liable to pay the tenant an amount which is 12 times the rent should the landlord fail to comply with section 51 of the Act after issuing the Notice.

Conclusion

The tenant's application to cancel the notice is dismissed without leave to reapply.

I grant the tenant a monetary order in the amount of \$100.00, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 6, 2020

Residential Tenancy Branch