



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") 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; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard.

At the outset of the hearing the parties said this tenancy has already ended with the tenants having vacated the rental unit. The tenants made an oral application to amend their application to instead seek a monetary award. I note that Branch records show the tenants have already filed an application for a monetary award and return of their deposits which was dismissed with leave to reapply on October 28, 2022.

Pursuant to section 64(3)(c) of the *Act* and Rule of Procedure 4.6 I find that adding a new head of claim without proper notice would be unfairly prejudicial to the landlord and therefore I decline to amend the present application.

I note that the recovery of filing fees is a discretionary award. The Branch may issue such an award for successful meritorious applications. The evidence before me is that this tenancy ended months ago in June 2022 but was not withdrawn nor amended in accordance with the Act and Rules. I find the tenants ought to have either withdrawn their application in its entirety as the matter had fully resolved or filed an amendment in accordance with procedures if they wished to make a separate claim for monetary relief.

The tenants did neither and simply occupied a hearing slot that could have been used for other applications with live issues. Given the limited resources of the Branch I find the tenants conduct to be inappropriate and contribute to the significant delays in hearings being scheduled. I find no basis for recovery of the filing fees and dismiss this portion of the tenants application accordingly.

Conclusion

I dismiss the present application in its entirety 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: October 31, 2022

Residential Tenancy Branch