



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 49 cancelling a Two-Month Notice to End Tenancy signed on January 17, 2023 (the “Two-Month Notice”); and
- return of the filing fee pursuant to s. 72.

S.S. appeared as the Tenant. The Landlord was represented by D.P. as their counsel. The Landlord’s agent, H.L., also attended the hearing.

Dismissal of Application

Upon review of the Landlord’s evidence, I came upon a letter noting that the Landlord had withdrawn the Two-Month Notice. At the outset of the hearing, I enquired on this letter. Landlord’s counsel confirmed that the Two-Month Notice had been withdrawn and that the Landlord was agreeable to paying the Tenant’s filing fee.

Landlord’s counsel also made mention of an application filed by the Landlord. The Landlord’s evidence includes a paper application for dispute resolution. I enquired whether there was a file number on the Landlord’s application and counsel advised that it associated with the present matter. I further enquired whether the filing fee had been paid or whether the paper application was simply uploaded as evidence as this application. Counsel indicates that it appears to have been uploaded as evidence.

I did not proceed on the Landlord’s application as, strictly speaking, there is no application. Applicant’s must submit an application and pay a filing fee. A Notice of Dispute Resolution is then generated by the Residential Tenancy Branch, which must then be served. This process, established by the Rules of Procedure, ensures that

respondent's have notice of an application such that they can properly respond to the claims being made against them. It would be improper to proceed on an application that was not filed, the fee not paid, and the Notice of Dispute Resolution never generated.

As the only application before me is the one filed by the Tenant and since the Two-Month Notice is withdrawn, I dismiss the application without leave to reapply. The Two-Month Notice is of no force or effect and the tenancy shall continue until it is ended in accordance with the *Act*.

I further find that the Tenant is entitled to his filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenant's filing fee. Pursuant to s. 72(2) of the *Act*, I direct that the Tenant withhold \$100.00 from rent owed to the Landlord on **one occasion** in full satisfaction of his 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: May 23, 2023

Residential Tenancy Branch