



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding BC HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), this hearing dealt with the Tenant's application to cancel a 10-Day Notice to End Tenancy for Unpaid Rent (Notice).

Preliminary Matters

The Landlord's agent testified that there had been a change in management companies that resulted in the erroneous issuance of the Notice. The Landlord's agent testified that to date, the Tenant is current in her rent obligation and has made payments under the rental arrears agreement the parties signed on March 29, 2023. The Landlord's agent stated that the Landlord had withdrawn the Notice and had so informed the Tenant prior to the hearing.

Issue to be Decided

May the Tenant recover the filing fee?

Background and Evidence

The tenancy commenced on July 1, 2022 and is on a month-to-month basis. The Tenant timely filed for dispute resolution upon receipt of the Landlord's Notice on April 25, 2023 for unpaid rent. The Tenant testified that she was upset by the Notice as she had complied with the rent arrears agreement and was current on her rent. She stated that she had spoken with the Landlord's agent after the Notice was issued to clarify that she did not owe any outstanding rent. The Tenant explained she asked the Landlord's

agent for written confirmation that she would not be evicted, but the Landlord refused. The Tenant stated she proceeded with the dispute resolution process to insure she would not be evicted. The Tenant requested she recover the filing fee because the hearing was necessary to confirm she would not be evicted.

The Landlord's agent testified that the Notice was issued as they tried to contact the Tenant repeatedly to discuss the rent issue with her, but she would not respond. The agent further testified that the Notice was served to "get her attention," and thereafter the parties were able to determine that the Tenant did not owe rent. The Landlord's agent testified that she told the Tenant the Notice was canceled and that she would have provided the written confirmation by email or similar if the Tenant had made that request. The Landlord stated that the Tenant pursued dispute resolution after this conversation and to assess the filing fee against it would be punitive.

Analysis

Section 72(1) of the Act permits an arbitrator to award one party recovery of the filing fee from the other party. Generally, a party that is successful and receives a favorable decision is awarded recovery of the filing fee paid. I accept that Landlord agent's testimony that it is withdrawing the Notice and has no intent to proceed on that Notice. I find the Notice is canceled.

In this case, neither party was successful as there was ultimately no dispute that the Tenant did not owe rent. The lack of written confirmation that no eviction action would be commenced against the Tenant compelled her to file this application to cancel the Notice. The parties disagree whether there was a request for written confirmation that the Landlord would not attempt to evict the Tenant.

I find the evidence inconclusive whether the Tenant requested written confirmation and was refused by the Landlord, compelling her to proceed with this hearing. The Tenant is denied recovery of the filing fee.

Conclusion

I find the Notice is canceled. However, I deny the Tenant's request to recover the filing fee from the Landlord.

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 4, 2023

Residential Tenancy Branch