



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNDC FF

Introduction

This hearing was scheduled to address the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent and other loss pursuant to section 67; and recovery of the filing fee for this application.

Both parties attended the hearing including 2 representatives for the landlord as well as the tenant. The landlords withdrew the application with respect to an order of possession and a monetary order. Landlord M testified that, since the time of their filing of this application, the tenant has paid all outstanding amounts related to the tenancy including outstanding rent and late fee payments. Both parties confirmed that the tenancy will continue. Landlord M testified that the landlord still seeks recovery of the \$100.00 filing fee for the original application.

Issue to be Decided: Is the landlord entitled to recover the filing fee?

Background and Evidence

The landlord testified that the tenant's rental cheque for February 2016 in the amount of \$931.00 was returned by the bank. This tenant had resided in the rental unit since September 2012 with a written month to month residential tenancy agreement.

The landlord testified that, when the tenant's February 2016 rental cheque was returned, they issued a 10 Day Notice to End Tenancy on February 12, 2016. The tenant confirmed receipt of the 10 Day Notice however she advised that she received the notice sometime later as she was in medical care at the time of the issuance of the notice.

Both parties agree that the tenant has now paid all rental arrears as well as late fees related to the outstanding rental amount. The landlord testified that the tenant paid her most recent monthly rental amount on time and in full.

The landlord sought to recover the \$100.00 filing fee for this application, indicating that they had no indication that the tenant would pay her outstanding rent and therefore they had no option but to file an application with respect to an end to this tenancy and a payment of the outstanding rental amount.

The tenant provided undisputed testimony that she pays her rent diligently. She testified that she receives third party assistance with the payment of rent and she does not receive that subsidy until the 4th or 5th of the month. The landlord's ledger reflects a regular rental payment by the tenant on or about the 4th of each month. The tenant testified that, as the payment of her subsidy arrives on this date, she has had a longstanding agreement with the landlord to pay her rent on that date. Despite that, she has reimbursed the landlord for late payment fees for this most recent period after the issuance of the 10 Day Notice.

The tenant submits that, as the landlord withdraws the application for a monetary order and an order of possession, they should not be entitled to recover the filing fee for this application. The tenant testified that she is reliable and that because of exceptional circumstances, she paid rent late on one occasion. The tenant testified that she has fully reimbursed the landlords for their costs but for the amount of the filing of this application and communicated her intention to do so to the landlords, making this application unnecessary.

The landlord claimed that the tenant should be responsible for this filing fee as the landlord was forced to take steps in applying to end the tenancy and recover the rent as a result of the tenant's actions.

Analysis

Section 72 of the Act addresses fees and monetary orders as a result of a dispute resolution hearing.

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) ... by one party to a dispute resolution proceeding to another party or to the director.

The doctrine of mootness is a general policy or practice that a court or tribunal may decline to decide a matter between parties that raises merely a hypothetical or abstract

question. In *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 is the leading case on the doctrine of mootness and it states,

The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case ... Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. ...

While the Residential Tenancy Branch is not a court, it is bound by many of the same decision-making principles as the courts. In particular, I find that I am bound by the doctrine of mootness. In this case, I find that the landlord's application is moot in that the substantive issues of possession of the rental unit and any rental arrears have been resolved. I further find that the resolution of the controversy between the parties results in this application for dispute resolution being moot.

While section 72(1) permits an arbitrator to make a discretionary award of repayment of a filing fee from one party to another, this repayment is ordered where a party has been successful on the merits of his or her application. As I have found that the landlord's application is moot, the landlord has not been successful on the merits of the application. On this basis, I decline to award the landlord recovery of the filing fee.

Conclusion

The landlord withdrew the application for an Order of Possession and a monetary award. I dismiss the landlord's application to recover the filing fee for this application.

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: April 19, 2016

Residential Tenancy Branch

