



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPL FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for Landlord's use of the rental unit pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

At the outset of the hearing, the parties confirmed that the tenant vacated the rental unit on July 31, 2016 so the landlord's no longer required an order of possession. The landlord advised he wished to proceed with the application to recover the filing fee.

Issues

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord served the tenant with a 2 Month Notice to End Tenancy on May 28, 2016. The effective date of the notice was July 31, 2016. The tenant did not file an application to dispute the Notice.

Due to concerns that the tenant may not vacate on the effective date of the Notice, the landlord filed an application for an order of possession prior to the effective date.

Analysis

The landlord's application for an order of possession was pre-emptive as the tenancy had not yet ended at the time of filing. The landlord filed the application as insurance against the tenant not vacating on or before the effective date of the Notice. The tenant vacated the rental unit on the effective date of the Notice. I find the landlord is not entitled to recover the filing fee for this application from the tenant.

Conclusion

The Landlord's application to recover the filing fee is dismissed.

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: August 05, 2016

Residential Tenancy Branch

