



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, FFL

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order of Possession based on a Tenant's written notice to end the tenancy dated September 25, 2019.
- b. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

On September 25, 2019 the Tenants gave the landlord notice in writing that stated they were ending the tenancy on October 30, 2019. I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by the landlord was served the tenants by mailing, by registered mail to where the Tenants reside on October 21, 2019. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order of Possession?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on May 1, 2015, end on April 30, 2016 and become month to month after that. The tenancy agreement provided that rent was \$745 per month payable on the

first day of each month. The present rent was \$835 per month. The tenants paid a security deposit of \$372.50 at the start of the tenancy.

On September 25, 2019 the tenant gave the landlord notice that they would be ending the tenancy on October 30, 2019. On October 1, 2019 the tenants gave the landlords a notice purporting to rescind the previous Notice to End. On October 4, 2019 the landlords wrote the tenant advising they were not accepting the tenants' cancellation of the previous notice and that the tenants would have to vacate.

The tenants ended at the end of October 2019.

The landlord seeks to recover the cost of the filing fee. The landlord testified there was discussion between the parties about the tenant continuing with the tenancy after October 4, 2019. They thought it was necessary as a precautionary measure to file the application for an Order of Possession.

The agent for the Tenants acknowledged there were discussions after October 4, 2019. However, she testified she advised the landlord that the tenants would be leaving at the end of October in accordance with their written notice of September 25, 2019 prior to the landlord filing the application. The landlord testified the tenant failed to submit anything in writing to confirm this.

Analysis

I dismissed the application for an Order of Possession as the Tenants vacated at the end of October in accordance with the Tenant's notice of September 25, 2019.

I dismissed the landlord's application to recover the cost of the filing fee. I accept the evidence of the advocate for the Tenants that she advised the landlord the tenant's would be leaving prior to the landlord filing the application. The landlord testified the filing was precautionary in case the tenant did not vacate.

Neither party submitted e-mails or other forms of written communication taking place after October 4, 2019. I determined the landlord is not entitled to recover the cost of the filing fee in this situation. The landlord's claim for an Order of Possession is based on the Tenant's notice on September 25, 2019. I do not accept the submission of the landlord that the lack of another written notice from the Tenants to the Landlord advising that the tenant's were leaving at the end of October entitled to the landlord to recover

the cost of the filing fee. The tenants are not responsible to pay the cost of the landlord taking a precautionary step to ensure the tenants would vacate.

This decision is final and binding on both parties.

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: December 12, 2019

Residential Tenancy Branch