



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

On February 14, 2023, the tenant applied for:

- (i) an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the "Act");
- (ii) an order for the landlord to comply with the Act under section 62 of the Act; and
- (iii) authorization to recover the cost of the filing fee under section 72 of the Act.

The tenant attended the hearing. No one dialled in on behalf of the landlord during the hearing, which lasted from 1 P.M. to 1:13 P.M. The tenant testified under oath that the tenant served a Notice of Dispute Resolution Proceeding on the landlord in person. There are emails from the landlord to the tenant acknowledging receipt of the Notice of Dispute Resolution Proceeding submitted into evidence. It is my finding that the landlord was served with the required notice in compliance with the Act.

Preliminary Issue- Unrelated Claims

Rules of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims.

It is my determination that the claim regarding the Notice and the recovery of the filing fee is not sufficiently related to the tenant's other claim to warrant that they be heard together. I exercise my discretion to dismiss the tenant's other claim with leave to reapply and will deal only with the cancellation of the Notice (and the related request for recovery of the filing fee).

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to recover the cost of the filing fee?

Analysis

As the onus is on the landlord to prove the validity of the Notice and the landlord has not attended the hearing to substantiate the Notice, I am cancelling the Notice.

Since the tenant was successful in the tenant's application, the tenant is entitled to \$100.00 to cover the cost of the filing fee under section 72 of the Act. The tenant may deduct this amount from rent on a one-time basis pursuant to section 72(2)(a) of the Act.

Conclusion

The application is granted.

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 02, 2023

Residential Tenancy Branch