



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC

MNSD

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed or compensation for damage or loss under the Act for the equivalent of two months rent under section 51(2). The tenant appeared but the landlord did not appear.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the landlord ended the tenancy for landlord's use and if so:

- Was the two-month notice for Landlord Use issued, served and acted upon in compliance with the Act ?

(1) Were steps taken by the landlord to accomplish the stated purpose given for ending the tenancy under section 49 within a reasonable period after the effective date of the notice?

(2) If not, can the tenant establish that the landlord's contravention of the Act resulted in damages or losses pursuant to section 51(2), for which the tenant is entitled to be compensated under the Act?

The burden of proof is on the tenant in regards to proving that the Landlord's notice and ending of the tenancy did not comply with the Act and that money was owed or damages and losses were incurred due to the landlord's violation of the Act.

The tenant testified that although the landlord had ended the tenancy based on landlord's use stating that the landlord would be occupying the unit, the landlord proceeded to sell the rental unit instead of occupying it as stated. Therefore the tenant was seeking the equivalent of two month's rent in compensation under section 51(2) of the Act.

Preliminary issue: Service

At the outset of the hearing, the tenant stated that the tenant was not successful in locating the landlord in order to serve the Notice of Hearing and evidence for these proceedings. The tenant had served the Notice of Hearing to the landlord's address, but it was returned as the landlord had moved away. The tenant had approached the landlord's realty agent identified on the listing, but was not able to obtain a current address for the landlord.

Section 89 (1) of the Act states that an application for dispute resolution must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*]. (substitute service)

In this instance, the tenant/applicant was not able to prove service to the landlord/respondent in any of the ways described above.

Conclusion

Based on the above and the fact that the respondent was not properly served according to the Act, I find that the hearing cannot proceed. Accordingly, I hereby dismiss the tenant's application with leave to reapply once the landlord's current service address has been established.

May 2009

Date of Decision

Dispute Resolution Officer