



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed or compensation under the Act, and to recover the filing fee for the claim.

The Application for Dispute Resolution and Notice of Hearing were sent by UPS express mail on September 5, 2012 and on September 10, 2012, the landlord accepted delivery by signing for the express mail package. Filed in evidence is the tracking detail.

Therefore, pursuant to section 71(2)(b) of the Act, I find that on September 10, 2012, the landlord has been sufficiently served for the purposes of this Act. The landlord did not appear.

Issues to be Decided

Is the tenant entitled to a monetary order for money owed?

Is the tenant entitled to recover the cost of the filing fee from the landlord?

Background and Evidence

The tenant testified on August 8, 2012, he responded to an online advertisement to rent a furnished unit. The tenant stated he was unable to personally view the unit as he was living outside the province, however, after viewing the online photographs he agreed to rent the unit and transferred \$648.00 to the landlord as a deposit. The tenancy was to begin August 28, 2012. Filed in evidence is a copy of the email dated August 8, 2012.

The tenant testified on August 28, 2012, the landlord was to meet him at the rental unit, however, the landlord said he was too busy and told him he would leave the key in a secure area for him to pickup.

The tenant testified when he attended the building, the key that was left by the landlord was for a different unit number. The tenant stated he viewed this rental unit and found it not suitable and was not what he agreed to rent. The tenant stated he tried to have the

landlord come and discuss the matter, however, the landlord refused. The tenant stated he did not move-in to this unit and went to a hotel. Filed in evidence is a copy of the email.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the tenant has the burden of proof to prove a violation of the Act by the landlord and a corresponding loss.

In this case, the tenant lived out of province and paid the landlord a deposit of \$648.00 to rent a unit that he viewed online. The rental unit provided to the tenant by the landlord was not the unit the tenant viewed online and agreed to rent. The documentary evidence submitted supports the tenant's claim as the email clearly mentions a specific rental unit number. I find the landlord has breached that agreement, by not providing the tenant with the proper rental unit. The tenant is entitled to have the full deposit returned.

I find that the tenant has established a total monetary claim of **\$698.00** comprised of the above described amount and the \$50.00 fee paid for this application. I grant the tenant an order under section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

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: November 19, 2012.

Residential Tenancy Branch