



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 loss under the Act.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Application for Dispute Resolution and Notice of Hearing were considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on November 29, 2012; the tenant stated the package was returned unclaimed.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. Refusal or neglect to pick up the package is not grounds for review.

The tenant testified on February 8, 2013, she sent her evidence package by registered mail, a Canada post tracking number was provided as evidence. The tenant stated the Canada post history report indicates on February 13, 2013, the landlord signed for the package. The tenant stated in the evidence package she also included a copy of the Application for Dispute Resolution and Notice of Hearing.

I find that the landlord has been duly served in accordance with the Act.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for loss under the Act?

Background and Evidence

The tenant testified on June 14, 2012, she entered into a mutual agreement with the landlord ending the tenancy on August 1, 2012, as the landlord had found a buyer for

the residence she was renting. Filed in evidence is a copy of the mutual agreement to end tenancy.

The tenant testified that as a result of the sale, the landlord was not able to provide her with the proper two months notice to end tenancy. The tenant stated the landlord and the buyer agreed to provide her financial compensation in the amount of \$3,000.00. The tenant stated as a result of an error made by the notary, she only received \$2,250.00. Filed in evidence is a copy of the agreement.

The tenant testified she has requested the balance owing of \$750.00, but the landlord has refused to pay her. The tenant stated the real estate agent contacted the landlord and received no response. The tenant stated the notary, who was responsible for the closing of the real estate transaction, also sent a letter to the landlord stating there was a discrepancy on the seller's statement of adjustment and there is amount of \$750.00 owing to the tenant. Filed in evidence is a letter from the real estate agent dated August 14, 2012. Filed in evidence is a copy of the letter from the notary to the landlord dated September 7, 2012.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming 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.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the tenant has the burden of proof to prove their claim.

In this case, the tenant and the landlord entered into an agreement, which provided the tenant with financial compensation. The tenant did not receive the full amount as stated in the agreement due to an error being made. The landlord was notified by the tenant, the real estate agent and the notary of the error. The landlord has failed to correct the error and pay the tenant the balance owing. I find the landlord has breached the agreement and the tenant is entitled to recover the amount of **\$750.00**.

I find that the tenant has established a total monetary claim of **\$800.00** comprised of the above described amount and the \$50.00 fee paid for this application.

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

Conclusion

The tenant is granted a monetary in the above amount.

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: March 01, 2013

Residential Tenancy Branch

