



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing was scheduled to deal with a tenant's Application for monetary compensation against the landlords for damage or loss under the Act, regulations or tenancy agreement; and, orders for the landlords to comply with the Act, regulations or tenancy agreement. The landlords did not appear at the hearing.

The tenant submitted that she sent the hearing documents to each landlord via registered mail on October 11, 2013. The address used for mailing was that of the residential property where the rental unit was located. The tenants stated that the landlords had been living in the basement suite until October 2013 and on October 3, 2013 the landlords had instructed the tenants to use the residential address to send any written communication to them as they were having their mail forwarded through Canada Post. The tenants stated that she had sent written communication to the landlords using the residential property address for purposes of providing a forwarding address for return of the security deposit which the landlords did receive as they refunded the security deposit. However, the registered mail envelopes containing the hearing documents were returned to the tenants as unclaimed by the landlords. The tenants provided the returned envelopes as evidence. The envelopes show that the registered mail was forwarded to another address by Canada Post and then were returned as unclaimed.

On October 28, 2013 the tenants also sent evidence to the landlords by way of parcel post requiring a signature and the parcel was returned as unclaimed as well.

Section 90 of the Act deems a person to have received documents five days after mailing so that a person cannot avoid service by refusing to accept or pick up their mail. Based upon the proof of service provided to me, I found the landlords were deemed to have been served and I continued to hear from the tenants without the landlords present.

Preliminary and Procedural Matters

By way of a written submission received by the Branch on December 30, 2013, the tenants requested that her monetary claim be increased by the equivalent of two months of rent. I did not permit the tenants to amend the monetary claim as the tenants had not notified the landlords of the request for amendment, contrary to the principles of natural justice, and had not amended the Application for Dispute Resolution in accordance with the Rules of Procedure.

I proceeded to hear from the tenants with respect to the nature of their monetary claim, as filed. During the testimony, the tenants indicated that they had made this monetary claim previously but had been informed that they could re-apply. I accepted their verbal testimony at that time and indicated the hearing would be adjourned so that the tenant's substantial evidence package may be reviewed at a later date.

After the teleconference call ended I reviewed the tenant's previous Application and the decision that was issued by the Arbitrator and ascertained that, in fact, the tenants had previously made this same monetary claim but that the Arbitrator had dismissed it **"without leave to re-apply"**.

Since the tenants have made this monetary claim previously and the claim was dismissed without leave, I cannot further consider the same claims again under this Application. Therefore, I refuse to continue with this Application and I have not requested the hearing be adjourned as I indicated during the teleconference call.

Conclusion

The tenants had previously made the same monetary claim against the landlords which was dismissed without leave to reapply. As such, I have refused to continue with this Application.

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: January 14, 2014

Residential Tenancy Branch

