



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD

Introduction

A hearing was conducted by conference call in the presence of the tenant applicants and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Act permits a party to serve another by mailing a copy of the Application for Dispute Resolution/Notice of Hearing by registered mail to where the other party resides. The Supreme Court of British Columbia has held that a party cannot avoid service by refusing to pick up their registered mail. I find that the Application for Dispute Resolution/Notice of Hearing was served by mailing, by registered mail to where the landlord resides on February 19, 2015. The Act provides that it is deemed receive 5 days later. The documents were returned with a notation "Refused." I find the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a 13 month fixed term written tenancy agreement that provided that the tenancy would start on February 1, 2014 and end on March 30, 2015. The rent was \$1350 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$1350 prior to the start of the tenancy.

The tenants testified they received threats from the upstairs tenant and after consulting with the landlord they vacated the rental unit on January 17, 2015. The landlord represented he would not make a claim against them for the unexpired portion of the fixed term. The tenancy ended on January 17, 2015.

The tenant(s) provided the landlord with his/her their forwarding address in writing on in person on February 4, 2015 and by mailing, by registered mail to where the landlord resides on February 4, 2015.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit of \$1350 prior to the start of the tenancy on February 1, 2014. I determined the tenancy ended on January 17, 2015. I further determined the tenants provided the landlord with their forwarding address in writing on February 4, 2015. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from

the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. As a result I determined the tenants have established a claim against the landlord in the sum of \$2700 for double the security deposit.

I dismissed the claims of the tenant for loss wages, half of a month rent and the cost of the rental truck as the tenant's failed to prove the landlord was at fault. The upstairs tenants threatened the tenants not the landlord. There is insufficient evidence to prove the landlord breached a duty owed to the tenants.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$2700 plus the sum of \$50 in respect of the filing fee for a total of \$2750.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent 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: April 16, 2015

Residential Tenancy Branch

