



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

The tenant applies for a monetary award equivalent to double his monthly rent pursuant to section 51(2) of the *Residential Tenancy Act* (the “Act”).

The respondent is the purchaser of the property and did not attend the hearing.

Issue(s) to be Decided

Has the respondent purchaser been served with the application and notice of hearing?
If so, does the relevant evidence show on a balance of probabilities that the tenant is entitled to the relief claimed?

Background and Evidence

The rental unit is a one bedroom condominium apartment. The tenancy started in February 2000. The final rent was \$685.00 per month.

The tenancy ended on October 31, 2014 pursuant to a two month Notice to End Tenancy. The Notice was given pursuant to s. 49(5) of the *Act* claiming that the landlord had entered into an unconditional agreement for sale of the property and that the purchaser has stated in writing that she has a good faith intention to occupy the premises.

The tenant testifies that he received the equivalent of one month's rent as required by the *Act* when a landlord issues a two month Notice and that his landlord has returned the security deposit.

He says that since vacating the premises on November 1, 2014 he has returned, spoken to the building manager, whom he got to know over the fourteen years he lived there, and was informed that the purchaser had not moved into the property.

He says and files corroborating advertisements to show that since February 15, 2015, the purchaser has been advertising the property for sale.

He says that he was informed by the purchaser's realtor who the purchaser was and that he should send her mail to the rental unit address. He served the purchaser by registered mail sent to the rental unit. Canada Post records show that the mailing was done on February 26, 2015 and that the mail went "unclaimed by recipient."

Analysis

Section 89 of the *Act* sets out authorized methods of service of originating documents. It provides that an application for dispute resolution may be served "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."

Section 90 of the *Act* specifies that a document sent by registered mail is deemed to have been received on the fifth day after mailing.

It is implicit in sections 89 and 90 that the addressee cannot avoid being deemed to have been served by simply declining to retrieve the registered mail.

In all these circumstances I find that purchaser has been served with the application and notice of hearing, deemed to have been received by her on March 3, 2015.

Section 51(2) of the *Act* provides,

- (2) In addition to the amount payable under subsection (1), if
 - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The tenant has made out a *prima facie* case that the landlord has not occupied the premises for at least six months within a reasonable time after purchasing the property.

On the basis of his uncontested evidence I grant the tenant the penalty imposed by s. 51(2). He is entitled to a monetary award of \$1370.00 plus the \$50.00 filing fee. There will be a monetary order against the purchaser in the amount of \$1420.00.

Conclusion

The tenant's application is allowed.

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: June 30, 2015

Residential Tenancy Branch

