



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This was a hearing with respect to the tenants' application for a monetary award. The hearing was conducted by conference call. The tenants called in and participated in the hearing. The landlord did not attend although the tenant sent the application and Notice of Hearing to the landlord's residence by registered mail on November 21, 2014. Canada Post records show that delivery attempts were made, notice cards were left, advising the landlord that the registered mail was available for pickup but the landlord failed to claim the registered mail and it was eventually returned to the sender.

Sections 89(1) of the Act provide that one of the ways in which an application for Dispute Resolution may be served on a landlord is by registered mail to the landlord's address. Failure to pick up registered mail is not a valid reason for failure to attend a dispute resolution hearing. Pursuant to Section 90 of the Act I find that the landlord is deemed to have been served with the application and Notice of Hearing received on the 5th day after it was mailed.

Issue(s) to be Decided

Are the tenants entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is located in Port Moody. The tenancy began on April 1, 2014. The monthly rent was \$1,750.00 and the tenants paid a security deposit of \$875.00 at the start of the tenancy. During the tenancy the landlord offered the property for sale. The

landlord served the tenants with a two month Notice to End Tenancy that required the tenants to move out of the rental property by November 30, 2014. The tenants testified that the landlord entered into a sale agreement that required the landlord to give vacant possession to the purchaser on November 1, 2015. The landlord agreed to pay the tenants the sum of \$3,250.00 as compensation for the early termination of the tenancy if the tenants agreed to move out of the rental unit by October 31, 2014. The tenants submitted copies of text messages from the landlord and a form of Mutual agreement to end tenancy that confirmed the landlord's agreement to pay the tenants the sum of \$3,250.00 if the tenants vacated the rental unit on October 31, 2014.

The tenants moved out on October 31, 2014 and the landlord gave the tenants a cheque in the amount of \$4,125.00. The cheque was for the agreed sum of \$3,250.00 plus the security deposit amount of \$875.00. The cheque was returned by the tenants' bank because the landlord closed the account upon which the cheque was drawn. The landlord sent a separate cheque from a different account in the amount of \$875.00 as payment of the tenants' security deposit. The tenants succeeded in cashing the second cheque.

The landlord has refused to replace the cheque or to pay the agreed amount and the tenants have applied to claim the compensation promised for their early departure from the rental unit.

Analysis

I accept the tenants' sworn testimony that the landlord requested that they move out of the rental unit before the effective date of the Notice to End Tenancy and that the landlord offered compensation in the amount of \$3,250.00 to obtain vacant possession by October 31st. The tenants accepted the offer, received the landlord's cheque and moved out. The landlord then reneged on her offer and closed the account upon which the cheque was drawn. The tenants provided a copy of the landlord's cheque and the bank's report that the account was closed as evidence in support of their application.

I find that the tenants agreed with the landlord to move out of the rental unit sooner than they were required by the landlord's Notice to End Tenancy in consideration of the payment of \$3,250.00. I find that the landlord breached the agreement by refusing to complete payment of the agreed amount. I find that the tenants are entitled to an award in the amount of \$3,250.00 plus the bank service charge of \$5.00 and the \$50.00 filing

fee for the tenants' application. I do not allow the claim for a mailing charge because this is not a recoverable cost under the *Residential Tenancy Act*.

Conclusion

The total award to the tenants is the sum of \$3,305.00 and I grant the tenants an order under section 67 in the said amount. This order may be registered in the Small Claims 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: July 07, 2015

Residential Tenancy Branch

