



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0966848 BC Ltd. Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order and an order compelling the landlord to return double their security deposit. Despite having been served with the application for dispute resolution and notice of hearing sent to the corporate landlord's registered and records office via registered mail, the corporate landlord did not collect the registered letter or send a representative to the hearing. The corporate landlord cannot avoid service by failing to collect registered mail and I found that the hearing could proceed as against the corporation in their absence.

The tenants served the landlord's agent with the application for dispute resolution and notice of hearing by registered mail sent to the corporate landlord's registered and records office and by regular mail at the rental unit. I am not satisfied that the agent is an officer of the corporate landlord and there is insufficient evidence to show that the agent, who does not live at the rental unit, conducts his business out of the rental unit. I therefore find that the agent was not properly served with notice of the claim against him and the claim is dismissed as against the agent. Although the style of cause in this decision and the accompanying monetary order still show the agent's name as a respondent, the monetary order is effective against the corporate landlord alone.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The tenants' undisputed evidence is as follows. The tenancy began in mid-October 2014 at which time the tenants paid a \$750.00 security deposit and a \$750.00 pet damage deposit. The tenancy ended on March 1, 2015. On March 2, 2015, the tenants sent the landlord's agent, DC, an email with their forwarding address. DC responded to this email.

The tenants testified that the rental unit was on the upper floor of a home in which another party occupied the lower floor. They testified that the occupant of the lower unit had a large dog which barked continuously. They provided evidence that they began complaining to the landlord requesting that he address the issue, but he did not act effectively to end the problem. The tenants testified that the barking affected their sleeping and their ability entertain guests. They seek to recover \$200.00 per month for loss of quiet enjoyment.

The tenants also seek to recover the cost of performing a land title search to obtain the landlord's address for service as well as the \$50.00 filing fee paid to bring their application.

Analysis

Section 38(1) of the Act provides that within 15 days of the later of the last day of the tenancy and the date the landlord receives the tenant's forwarding address in writing, the landlord must either return the security and pet damage deposit in full to the tenant or file an application for dispute resolution to make a claim against the deposits.

Section 38(6) of the Act provides that where a landlord fails to comply with section 38(1), the landlord must pay to the tenant double the security and pet damage deposit.

I find that the tenants paid a \$750.00 security deposit and a \$750.00 pet damage deposit and vacated the rental unit on March 1, 2015 and that DC received the forwarding address March 2, 2015 via email. Although email is not typically a means of service recognized by the Act, because DC responded to the email, I find that he received it and I exercise my discretion under section 71(2)(c) to find that the address was sufficiently served for the purposes of the Act. I find that the landlord failed to comply with section 38(1) and is now liable to pay the tenants double the security and pet damage deposits. I therefore award the tenants \$3,000.00.

With respect to the claim for loss of quiet enjoyment, the *Residential Tenancy Act* (the "Act") establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;
3. Proof of the value of that loss; and (where applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

Section 28 of the Act guarantees a tenant's right to quiet enjoyment, which includes freedom from unreasonable disturbance. I accept the undisputed testimony of the tenants and I find that the occupant of the lower suite created an unreasonable disturbance by failing to control her dog. I find that the tenants reported the issue to the landlord's agent, but DC failed to act effectively to solve the problem.

I find that the landlord breached s. 28 of the Act by failing to provide the tenants with quiet enjoyment of their rental unit and I find that the loss suffered by the tenants is compensable as the tenants were not receiving the full value of what they were paying for. I find there was no means by which the tenants could have minimized their loss as they could not have exercised control over the lower occupant or her dog. I therefore find the tenants have satisfied the test outlined above and are entitled to compensation. I find their claim of \$200.00 per month to be reasonable. As the tenants occupied the unit for just 1/3 of the month of October, I find they should recover \$67.00 for that month and \$200.00 for each of the months of November – February inclusive. I award the tenants \$867.00.

I dismiss the claim for the cost of the land title search as under the Act, the only litigation-related expense I empowered to award is the cost of the filing fee paid to bring an application. As the tenants have been successful in their claim, I find they should recover the filing fee and I award them \$50.00.

The tenants have been awarded a total of \$3,917.00 and I grant them a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants are granted a monetary order for \$3,917.00.

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: November 05, 2015

Residential Tenancy Branch

