



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

The Application for Dispute Resolution filed by the Tenants seeks the following:

- a. A monetary order in the sum of \$1100.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of the 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, 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 on the landlord by mailing, by registered mail to where the landlord resides on March 19, 2016. The Act provides that it is deemed received 5 days later. I determined the landlord has been sufficiently served even though he failed to pick up the documents. 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 tenancy began on December 1, 2012. The rent was \$1100 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$550 at the start of the tenancy.

By letter dated May 20, 2015 the landlord gave the tenants notice of termination of the leases effective July 31, 2015 due to the successful sale of the property.

On June 13, 2015 the tenants gave the landlord written notice they would be vacating the rental unit by June 30, 2015 and asking for the equivalent of one month rent or the sum of \$1100 as provide under the BC Housing website under "Two Month Notice to End Tenancy: Compensation."

The tenants vacated the rental unit by June 30, 2015. The landlord proceeded with the sale. The landlord subsequently promised to pay the \$1100 but asked for time to make the payments. The landlord has not paid the agreed sum.

Analysis:

Section 51 of the Residential Tenancy Act provides that where a landlord serves notice to end Tenancy under section 49 (landlord use of property) the tenants are entitled to the equivalent of one months rent. Both parties acted under the impression that the landlord had given a valid notice. The tenants complied with the Act by giving notice and vacating one month early. I determined the tenants are entitled to the equivalent of one month rent. The landlord has promised to pay the sum. The landlord has obtained a significant advantage by the tenants complying with the Notice and vacating as they did as he was able to complete the sale of the rental unit.. In my view the policy reasons for this section justify a monetary award in favour of the tenants even though the landlord did not use the formal notice that was approved of in the legislation.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1100 plus the sum of \$100 in respect of the filing fee paid for a total of \$1200.

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: August 04, 2016

Residential Tenancy Branch

