



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, MT, OLC

Introduction

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

- a. A monetary order in the sum of \$5200
- 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 respondents. 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 tenants testified they attempted to serve the respondents by mailing, by registered mail addressed to the respondents on January 21, 2017 to the address of the rental unit which is the landlords' address in the Land Title Office. The documents were returned to the Tenants by Canada Post with the notation "moved."

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 tenants moved into the rental property in 1999. In March 2017 they were advised by the long term owner of the property that the property had been sold. The rent at the time the tenancy ended was \$2400 per month payable in advance on the first day of each month.

On June 3, 2017 they received a 2 month Notice to End Tenancy from the new owners setting the end of tenancy for July 31, 2017. The one month Notice to End Tenancy alleged the following grounds:

"All the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the tenant, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

The tenants testified they discussed the Notice with the agent for the new owner and advised that it had not been served on time for the tenancy to end on July 31, 2017 and that the end of tenancy date should end on August 31, 2017. The parties subsequently reached an agreement

and the tenants vacated the rental property on August 15, 2016. The Tenants vacated the rental unit on August 15, 2016

The tenants testified that the respondents are the registered owners as named in the Land Title Office. They provided a Title Search that indicates that the respondents became the registered owners on August 15, 2016. The Tenant testified he believes the respondent are off shore owners who are not living in the rental property and not living in Canada.. He visited the rental property in November and discovered new tenants living in the rental property. The new tenants advised the landlord they had given DZ who was acting as an agent for the owners 12 post dated cheques. They were not prepared to give an address for the agent and were not prepared to share further information.

The tenant testified the property has been flipped 3 or 4 times since March 2016. The sale price increase from about \$2.5 million to \$4.5 million during this process. They never met the landlord who gave them the 2 month notice but dealt with their agent. They have never met the respondents. They believe the respondents are residing overseas. The property appears to be run down.

Analysis:

Section 59(32) of the Residential Tenancy Act provides as follows:

Starting proceedings

59 ((3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Section 89 (1) of the Residential Tenancy Act provides as follows:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) 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;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

After carefully considering all of the evidence I determined the tenants failed to prove that they have served the respondents in a way required by the Act for the following reasons:

- The respondents have not been personally served.
- At the time the Applicants attempted to serve the respondents the respondents did not reside in the rental property and were not carrying on business at that address. A set of new tenants were residing in the property.
- The applicants testified the respondents are residing overseas and they do not know where they are residing
- The documents were returned by Canada Post with the notation "moved." This is consistent with the evidence of the Tenants that the respondents are not living in the property.
- I determined based on evidence presented that the registered owner mailing address set out in the Land Title search is not sufficient to determine the respondents are residing in the rental unit given the overwhelming evidence that this is not correct.

As a result I ordered that the application be dismissed with liberty to re-apply. I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period

This decision is final and binding on the parties.

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: March 30, 2017

Residential Tenancy Branch