



Dispute Resolution Services

Page: 1

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 \$13,560
- b. An order to recover the cost of the filing fee.

The Landlord failed to appear at the scheduled start of the hearing which was 1:30 p.m. on September 30, 2019. The Tenant Applicant was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the landlord to call in. The landlord failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The tenant was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at the 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 and their address for service. The Policy Guideline provides 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 June 20, 2019. It was also the address of service of the landlord set out in tenancy agreement and 2 month Notice to End Tenancy. The Canada Post tracking service states the "Item was refused by the recipient. Item being returned to sender."

On August 20, 2019 the tenant sent the Application for Dispute Resolution/Notice of Hearing by registered mail to the address of the rental property. Those documents were not returned.

I determined the respondent has been sufficiently served 5 days after mailing as the Policy Guidelines provide that a party cannot avoid service by refusing to claim their registered mail. With respect to each of the applicant's claims I find as follows:

Issues 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 April 15, 2011. The rent is \$1050 per month payable in advance on the 15th day of each month. The rent was subsequently increased to \$1130 per month. The tenant(s) paid a security deposit of \$550 on March 23, 2011.

The landlord served a 2 month Notice to End Tenancy on the tenant on January 15, 2019 that set the end of tenancy for March 15, 2019. The ground set out in the Notice to End Tenancy was that “the rental unit will be occupied by the landlord or the landlord’s close family member (parent, spouse or child, or the parent of child of the landlord’s spouse.

The tenancy ended on March 15, 2019 and the tenant vacated at that time.

The tenant testified that around the middle of June he noticed that the rental property was listed for sale. He subsequently talked to the concierge who advised him that a third party had completed an inspection on the rental unit.

Section 51 of the Residential Tenancy Act provides as follows:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

...

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.⁵¹

Analysis:

I determined the Tenant was served with a 2 month Notice to End Tenancy on January 15, 2019 that set the end of tenancy for March 15, 2019. The ground set out in the Notice was that it was to be used by the landlord or a close family member. I determined based on the evidence presented that the landlord sold the rental property to a third party sometime around the middle of June 2019 or July 2019. The landlord has not used the rental unit for the stated purpose for ending the tenancy that was set out in the Notice to End Tenancy for at least 6 months beginning within a reasonable period after the effective date of the Notice. The landlord did not attend the hearing and did not provide any evidence. I determined there were no extenuating circumstances which might be the basis to excuse the landlord.

As a result I determined the tenant has established a claim against the landlord for 12 times the monthly rent or the sum of \$13,560 ($\$1130 \times 12 = \$13,560$)

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$13,560 plus the sum of \$100 in respect of the filing fee paid for a total of \$13,660.

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 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: September 30, 2019

Residential Tenancy Branch