



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: MNDC

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$20,156 which includes an order for the return of the security deposit.
- 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 November 21, 2019. The Tenants were present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the scheduled 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 tenants were 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 Applicant testified that she does not know where the landlord resides or carries on business. She further testified that she attempted to serve the Application for Dispute Resolution/Notice of Dispute Resolution Hearing by mailing, by registered mail to the address of the rental unit. The landlord purchased the property in November 2018. The tenants testified he forced them to leave on 3 days notice without giving proper notice by the landlord. Fearing for their safety they vacated the property on November 30, 2019. The tenants produced a registered mail receipt addressed to that address which indicates the Application for Dispute Resolution was mailed on August 9, 2019. However, it further indicates it was unclaimed and returned to sender. During the hearing the tenant did a search of the tax rolls for the property which indicates it was sold in March 2019.

I determined the Tenants failed to prove that they have sufficiently served the landlord in accordance with the Residential Tenancy Act. The documents were not picked up by the landlord. It does not appear that the landlord was living in the property at the time the documents were mailed, as that property was sold 4 months earlier.

Accordingly, **I order the application dismissed with liberty to reapply.** I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

At the hearing the Applicants were encouraged to **immediately contact their solicitor or an information officer at the Residential Tenancy Branch** to determine what steps they can take including how to find out where the landlord might be residing, whether they can take steps to obtain an order for substitute service etc.

It is unclear whether the tenants provided the landlord with their forwarding address. The urgency of obtaining legal help is underscored by the following section of the Act. Section 39 of the Act provides as follows:

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, **if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy(my emphasis),**

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) **the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.(my emphasis)**

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 21, 2019

Residential Tenancy Branch