



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC EVERGREEN REALTY
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for a monetary order in the amount of \$25,300.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenants attended the teleconference hearing. The tenants gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the landlords did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated October 17, 2019 (Notice of Hearing), the application, and documentary evidence were considered. The tenants testified that the Notice of Hearing, application and documentary evidence were served on the landlords by registered mail on October 20, 2019. The tenants provided two registered mail tracking numbers in evidence and confirmed that the name and address on the registered mail package matched the name and address for each landlord. For ease of reference both registered mail tracking numbers have been included on the cover page of this decision and identified as 1 and 2. According to the Canada Post online tracking website, one page was signed for and accepted on October 22, 2019, while the other package was returned to the sender and marked "unclaimed". Documents sent by registered mail are deemed served 5 days after mailing pursuant to section 90 of the Act. Based on the above, I find the two packages were duly served with the first package being served on October 22, 2019, and the other package being deemed served October 25, 2019.

Preliminary and Procedural Matter

The tenants confirmed their email addresses at the outset of the hearing. The tenants did not include an email address for the landlords. As a result, the decision will be emailed to the tenants and sent by regular mail to the landlords.

Issues to be Decided

- Are the tenants entitled to money owed for compensation for damage or loss under the Act?
- Are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The tenants testified that a copy of the tenancy agreement was not submitted in evidence. The tenants also confirmed that the only document served on them to end the tenancy was submitted evidence, which the tenants were advised was a Proof of Service document and not an actual 2 Month Notice to End Tenancy (2 Month Notice).

As a result of the above the tenants were advised that their claim for 12 months of compensation due to the landlords failing to comply with the reason stated on the 2 Month Notice was dismissed, without leave to reapply as the tenants were not served with a 2 Month Notice under the Act, and as a result, the tenants were not required to vacate the rental unit. Instead, the tenants vacated the rental unit after being served with a Proof of Service document and not an actual 2 Month Notice.

Analysis

Based on the above, and considering the tenants' testimony and documentary evidence, and on a balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenants did what was reasonable to minimize the damage or losses that were incurred.

As described above, the tenants are not entitled to compensation under the Act based on a 2 Month Notice if a 2 Month Notice was not served upon them. In the matter before me, the only document presented in evidence was a Proof of Service document and not an actual 2 Month Notice. As a result, I find the tenants have failed to meet all four parts of the test for damage or loss described above and I dismiss the tenants' application without leave to reapply as a result.

As the tenants' application has failed, I do not grant the filing fee.

Conclusion

The tenants' application fails in its entirety.

The filing fee is not granted.

This decision will be emailed to the tenants and sent by regular mail to the landlords.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 25, 2020

Residential Tenancy Branch