



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation and for the filing fee.

The tenant testified that he served the landlord with the hearing package on August 27, 2018, by registered mail, to the service address provided by the landlord on the tenancy agreement. The package was returned as unclaimed. The tenant filed a copy of the tracking slip.

Residential Tenancy Policy Guideline No. 12 provides that, where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Based on the tenant's evidence and pursuant to section 89 and 90 of the *Act*, I find that the landlord has been deemed served with the tenant's dispute resolution hearing package on September 01, 2018, 5 days after the mailing of the package. The landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the tenant entitled to a monetary order for compensation and for recovery of the filing fee?

Background and Evidence

The tenant testified that on July 08, 2018, the parties entered into a tenancy agreement with an effective start date of August 01, 2018.

The rent was set at \$1,200.00 due on the first of each month. On July 08, 2018, the tenant paid a security deposit of \$600.00 and a pet deposit of \$600.00 by e-transfer. The landlord agreed to allow the tenant to move in on July 29, 2018. The tenant had a new job starting August 01, 2018.

The tenant stated that he rented a truck and made arrangements to move to the city that the new rental was located in. The move was scheduled for July 29, 2018. The tenant testified that on July 27, 2018, he received a message from the landlord by email. The message explained that the rental unit was sold and therefore was no longer available for the tenant.

The tenant testified that he was left with in a position where he had no accommodation for himself and his family including two children and a dog and would have problems starting a new job on August 01, 2018. The tenant made several calls to the landlord but the landlord did not pick up or return his calls. However the landlord returned the deposits to the tenant by e-transfer.

The tenant drove his rented truck with his belongings to a storage unit. The tenant continued on to the city where his new job was due to start. He stated that fortunately his boss was kind enough to provide him with motel accommodation for 9 days till he found accommodation.

The tenant had to rent a second truck to move his belongings to the new address. The tenant stated that he incurred expenses for gas to move his belongings to and from storage, storage costs and food while he resided in the motel and lost one day of wages. The tenant provided receipts for all the extra expenses he incurred due to the loss of the rental unit just two days prior to the start of tenancy.

Analysis

Based on the undisputed testimony of the tenant and pursuant to section 16 of the *Residential Tenancy Act*, I find that the landlord and tenant had entered into a binding tenancy agreement on July 08, 2018, when they entered into a contract and the tenant paid a security deposit and a pet deposit.

Section 16 of the *Act* states that the rights and obligations of a landlord and tenant take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case, the tenant entered into a tenancy agreement on July 08, 2018, for a tenancy that was supposed to start on August 01, 2018. Accordingly the rights and obligations of a landlord and tenant took effect from the date the tenancy agreement was entered into. On July 27, 2018, the landlord informed the tenant that the rental unit was not available and therefore I find that the landlord breached the tenancy agreement.

The tenant has filed receipts for the costs he incurred for truck rentals, storage costs, cost of gas and meals. Based on the undisputed testimony of the tenant and the receipts filed into evidence, I find that the tenant has established a claim of a total of \$1,640.53. This does not include the cost of the motel and lost wages which the tenant could have recovered if he had made an application to be reimbursed.

Since the tenant has proven his case, I award him the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim of \$1,740.53. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$1,740.53**.

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 20, 2018

Residential Tenancy Branch