



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes O

Introduction

This hearing dealt with the Landlord's application for Review of a Decision and Order dated July 23, 2008, granted in favour of the Tenant (jointly referred to herein as the "Decision"). The Decision granted the Tenant a monetary order \$1,207.50.

On May 13, 2011, the Director of the Branch granted this review hearing, based on written submissions of the Landlord. The Tenant was served by the Director with the Notice of this Hearing and the letter granting the review. I find the Tenant was duly served in accordance with the Act, however, the Tenant did not attend the hearing.

An Advocate for the Landlord and the Landlord attended the hearing and gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Was the Landlord unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the Landlord's control?

Is there jurisdiction under the Act?

Background and Evidence

The Landlord, the Tenant and a third party were involved in a dispute at the rental unit which required the police to attend.

As a result of the dispute, the Tenant was ordered to have no contact with the Landlord.

In the documentary evidence filed by the Landlord, a Recognizance of Bail document, dated June 3, 2008, was submitted. The Recognizance document includes, but is not limited to, an order for the Tenant, "... not to have any contact or attempt to contact [the third party] or [the Landlord] at any time, for any reason, either directly or indirectly except to retrieve your belongings through a third party."

The Tenant filed his Application 10 days after the Recognizance was issued.

According to the Decision, the Tenant served the Landlord with his application and notice of the original hearing, by registered mail. The Decision notes the registered mail was returned to the Tenant marked "refused". Under section 90 of the Act a party is deemed served five days after mailing, even if the mail is refused by the recipient.

The Landlord submitted evidence and testified that she refused the registered mail because of the no contact order. She was uncertain of what the Tenant may be sending her and because of the no contact order determined she should not accept the registered mail.

The Landlord testified and submitted evidence that she shared kitchen and bathroom facilities with the Tenant.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord was unable to attend the hearing because of circumstances that could not be anticipated and were beyond her control, and that there is no jurisdiction under the Act for the Tenant's Application.

The Tenant did not inform the Dispute Resolution Officer making the original Decision of the formal Recognizance of Bail requirements preventing the Tenant from contacting the Landlord. This was beyond the control of the Landlord and could not be anticipated. The Landlord was aware of the no contact order and was concerned for her safety when she refused the registered mail.

Furthermore, I find the Residential Tenancy Branch has no jurisdiction in the dispute between the Tenant and the Landlord since the Act does not apply to their circumstances.

Under section 4(c) the Act does not apply to living accommodations in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. Therefore, I am satisfied that in this particular situation the rental unit does not come under the jurisdiction of the Act.

The parties are advised to seek legal advice for the proper forum to resolve their dispute.

Having made the above findings, I order that the Decision and Order in this matter dated July 23, 2008, are both cancelled and set aside, and are of no force or effect.

Conclusion

The Landlord was not served with the Notice of Hearing and Application of the Tenant for the original hearing, as the Landlord refused these because the Tenant was under a no contact order through a recognizance of bail document.

The Decision and Order obtained by the Tenant on July 23, 2008 were *void ab initio*, as there was no jurisdiction under the Act and therefore, there was no authority to proceed with the Tenant's Application.

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: June 21, 2011.

Residential Tenancy Branch