

Decision

Dispute Codes: MNSD

Introduction

This hearing was convened in response to the tenant's application for a monetary order as compensation for the double return of the security deposit. The tenant participated in the hearing and gave affirmed testimony.

Despite mailing of the application for dispute resolution and notice of hearing (the "hearing package") by registered mail, the landlord did not appear. The tenant's evidence includes the Canada Post tracking numbers for the registered mail, and the Canada Post website informs that the hearing package was "successfully delivered" on May 30, 2011. The hearing package is, therefore, deemed to have been served.

Issues to be decided

- Whether the tenant is entitled to the above under the Act

Background and Evidence

A hearing was previously held concerning this same dispute on July 28, 2010. While the tenant was the only party present, the Dispute Resolution Officer found that the landlord ("RH") had been properly served.

A decision and monetary order were issued in favour of the tenant dated July 28, 2010, thereafter amended on August 19, 2010. The quantum of the monetary order is \$1,000.78, and reflects the double return of the security deposit plus interest.

Subsequently the tenant sought to contact the landlord and determined that he is now deceased. After seeking legal advice the tenant's inquiries led him to determine that the landlord was not the owner of the property. The tenant then filed an application on May 21, 2011 which led to the scheduling of this present hearing. The central difference between the 2 applications is the style of cause for the landlord; in his first application the tenant named "RH," who was an agent of the landlord. In this present application the tenant has named the landlord by way of a corporate name.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

The Act defines “landlord,” in part as follows:

“**landlord**”, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner’s agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that landlord “RH,” as named in the tenant’s previous application, was an agent of the landlord named in the tenant’s present application. Accordingly, I further find that the issue in dispute was previously heard on July 28, 2010, and that a decision and monetary order were issued as a result.

Black’s Law Dictionary defines *res judicata* in part, as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

The tenant has the option of seeking legal advice in regard to how to proceed to enforce the monetary order which was previously issued in his favour.

Conclusion

Following from all of the above, the tenant’s application is hereby dismissed.

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*.

DATE: August 31, 2011

Residential Tenancy Branch