



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Applicant for a monetary order for the return of double their security deposit, and to recover the cost of the filing fee.

The applicant and the applicant's spouse attended the hearing. As the respondent did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The applicant, NM, testified that the Notice of Hearing and evidence package was served on the respondent by registered mail on September 1, 2013. The applicant provided a registered mail receipt with tracking number as evidence and confirmed that the name and address matched the name of the respondent and the rental unit address of the respondent. Based on the applicant's evidence, the applicant went online to track the registered mail package and confirmed that the respondent did not claim the package and that the package was returned to the applicant on October 11, 2013 as "unclaimed". Documents sent by registered mail are deemed served five days after mailing under the *Act*. Based on the above, I find the respondent was duly served on the fifth day after mailing, in accordance with the *Act*. I note that refusal or neglect to pick up registered mail does not constitute grounds for a Review.

Preliminary Issue

The first issue that I must decide is whether the *Act* has jurisdiction over the parties in order to proceed with the application.

The applicant writes in her evidence that a tenancy began on April 15, 2013. The applicant testified that she rented a room from a tenant who in turn rented one of the rooms to her and that she paid a security deposit of \$400.00. The applicant testified that she did not meet or know who the landlord of the rental unit was and still does not know.

The applicant did not provide a copy of a tenancy agreement and is seeking the return of double the security deposit under the *Act*.

Analysis

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

Section 1 of the *Act* defines "landlord" as the following:

"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;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- c) a person, other than a tenant occupying the rental unit, who**
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a respondent under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

[emphasis added]

The evidence of the applicant was that a tenant was subletting rooms in the rental unit and that she had never met the landlord and does not know the landlord of the rental unit. Based on the above, I find the applicant is an occupant and the respondent is a tenant and not a landlord under the *Act*.

Section 13 of the Residential Tenancy Policy Guidelines states:

Where a tenant allows a person who is not a tenant to move into the premises and share rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

In this case, the respondent allowed another person to move into the rental unit and occupy a room. There was no evidence provided that a new tenancy agreement with the owner of the rental unit to have the applicant added as a co-tenant. Therefore, I find the applicant is an occupant and not a tenant, and has no rights or obligations under the *Act* as a result.

As this is a dispute between an occupant and a tenant, and not a dispute between a landlord and tenant, I find that I do not have jurisdiction to hear this dispute under the *Act*.

Conclusion

I decline to hear the applicant's application due to lack of jurisdiction under the *Act*.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

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: November 04, 2013

Residential Tenancy Branch

