



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

This interim decision is issued in response to the landlord's request pursuant to the Rules of Procedure for an order adding a third party and authorization for a court reporter to transcribe the hearing scheduled for August 06, 2014.

The hearing in question is set to address two applications by the landlord and one application by the tenant. The tenant seeks compensation for personal belongings allegedly destroyed by a bailiff who acted on a writ of possession issued pursuant to an order of possession granted on September 30, 2013. In his application, the tenant acknowledged that it was the bailiff, not the landlord, who allegedly destroyed his belongings. The landlord requested that the bailiff be added as a third party further to Rule 13.1 of the Rules of Procedure. That Rule provides as follows:

13.1 Respondent may ask that a party be added

Where permitted by the Act, a respondent may request that an arbitrator add a third party to a dispute resolution proceeding where the respondent has a claim against that third party, arising from the claim of the applicant.

The jurisdiction of the Residential Tenancy Branch is derived from section 51 of the *Manufactured Home Park Tenancy Act* (the "Act"), which provides as follows:

51(1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

51(1)(a) rights, obligations and prohibitions under this Act;

51(1)(b) rights and obligations under the terms of a tenancy agreement that

51(1)(b)(i) are required or prohibited under this Act,
or

51(1)(b)(ii) relate to

51(1)(b)(A) the tenant's use, occupation or maintenance
of the manufactured home site

or
51(1)(b)(B) the use of common areas or services or
facilities.

Only landlords and tenants have rights, obligations and prohibitions under the Act and tenancy agreement. In order to add the bailiff as a third party, the landlord must establish that the bailiff is captured in the definitions of either landlord or tenant under the Act. The bailiff is clearly not a tenant. Although the bailiff acted as an agent of the landlord, which would ordinarily fall under the definition of landlord, the bailiff acted pursuant to a writ of possession issued by the Supreme Court authorizing the bailiff and not the landlord to deal with the tenant's belongings which were in the manufactured home. I find that the landlord did not have the right to deal with those belongings as the belongings were seized pursuant to the writ of possession enforceable only by the bailiff and therefore the bailiff was not exercising a right of the landlord and cannot be considered a landlord.

While Rule 13.1 permits me to add a third party to a proceeding, I may only do so "Where permitted by the Act". I find that I am not permitted by the Act to add a third party who is not a landlord or a tenant of the manufactured home site in question and I find that I do not have jurisdiction over the issues arising from the bailiff's actions. I therefore deny the landlord's request to add the bailiff as a third party.

When the tenant's application is heard on August 06, 2014, the tenant will bear the burden of proving on the balance of probabilities that the landlord, rather than the bailiff, destroyed her belongings. Should the tenant wish to proceed against the bailiff, she may pursue the bailiff in either the Small Claims or Supreme Court, depending on the amount of compensation she is seeking.

Turning to the landlord's request for authorization to arrange for an official recording of the August 06, 2014 proceedings, I find the request to be reasonable and I will allow a court reporter to attend and transcribe the hearing.

Further to Rule 9.2, the landlord will be responsible for making arrangements for the court reporter's attendance and paying all of the associated costs. As the hearing will be held by telephone conference call, the court reporter may be physically present at the landlord's location or may attend via telephone from a separate location. The landlord is also required to provide both the Residential Tenancy Branch and the tenant with a copy of the transcript when it is made available.

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: July 07, 2014

Residential Tenancy Branch

