



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, FF

Introduction

The tenant applies for unspecified relief alleging that the landlord has referred an unwarranted debt to a collection agency and thereby negatively affected the tenant's credit rating. She indicates that the landlord has obtained a monetary judgment against her without her knowledge.

Issue(s) to be Decided

Based on the relevant evidence presented at hearing, on a balance of probabilities, what relief if any is the tenant fairly entitled to?

Background and Evidence

Most of the facts are not in dispute.

The rental unit is a three bedroom townhouse. The applicant tenant and her son Mr. A.N. moved in in October 2012.

There is a written tenancy agreement showing the mother and son to be the tenants, however it appears that only the applicant tenant signed that tenancy agreement.

The applicant tenant moved to a different city at the end of June 2014. Her son and another man, Mr. B.J., were to stay. Ms. M.N. says that prior to leaving she provided the landlord's building manager, Mr. R. with a letter dated May 28, 2014 giving her notice and asking that the landlord "transfer residency" to her son and the Mr. B.J.

She also says that she had direct conversations with Mr. R. confirming that she was leaving.

There is no doubt but that she did leave. She produced consecutive rent receipts from a rental unit in another city.

The landlord's representative Ms. C.S. indicates that the landlord has no record of the May 28 notice letter and that Mr. R. is no longer in the landlord's employ and his whereabouts are unknown. Mr. D.R, the present on-site manager, testified that he had occasionally seen the applicant tenant around the building. The applicant tenant says she came back to visit.

The applicant tenant's son and Mr. B.J. did not pay the rent.

The landlord issued a ten day Notice to End Tenancy and applied for an order of possession and monetary award against the applicant tenant and her son.

It would appear that the applicant tenant and her son were served with the application by registered mail addressed to the dispute address. It also appears that the applicant tenant's son collected and signed for the mail on behalf of both he and his mother.

The application proceeded by way of "direct request" on November 3, 2014, without a hearing. The relevant file number is shown on the front page of this decision. In that proceeding the arbitrator determined that the applicant tenant and her son had been served with the direct request documents. The arbitrator issued an order of possession and a monetary order in the amount of \$2596.00 for unpaid rent from July, September and October 2014.

The applicant tenant says she became aware of the proceeding against her around November 10, 2014.

Analysis

A number of questions arise regarding: who the lawful tenant or tenants were originally, whether or not the applicant tenant ceased to be a tenant in June 2014, whether registered mail to the applicant tenant at the dispute address was valid service given that she might not have been "residing" there, whether acceptance of her registered mail by her son cured any defect in service.

However, there is in existence the decision of the arbitrator dated November 3, 2014 in which the arbitrator found that there was good service and proceeded to grant an order of possession and a monetary award. In that proceeding the applicant tenant and the

respondent landlord were both parties. The *Residential Tenancy Act* (the “*Act*”) does not authorize me to rehear that application, to change it or to set the decision aside.

To consider the applicant tenant’s request would be the equivalent of an appeal from the November 3, 2014 decision and the *Act* does permit an arbitrator to do so.

The applicant tenant’s proper remedy is to apply for a review of the previous arbitrator’s decision pursuant to Part 5 Division 2 of the *Act*, and for an extension of time to make that application, based on the ground that she was unable to attend the hearing for circumstances beyond her control and which were not reasonably foreseeable.

I appreciated that this decision will cause a delay to the participants, but I have determined that I do not have the authority to re-consider the decision of the previous arbitrator.

Conclusion

The tenant’s application is 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*.

Dated: May 15, 2015

Residential Tenancy Branch

