



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, OPR, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Applicant under the *Residential Tenancy Act* (the “Act”) seeking recovery of unpaid rent, recovery of the filing fee, and an order of possession for the dispute address based on a 10 day Notice to End Tenancy for Unpaid Rent or Utilities (a “10 Day Notice”).

The hearing was convened by telephone conference call and was attended by the Applicant and their legal counsel. All testimony provided was affirmed. The Applicant and their legal counsel were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the Respondent must be served with a copy of the Application and Notice of Hearing. As neither the Respondent nor an agent acting on their behalf attended the hearing, I confirmed service of these documents as explained below.

Legal counsel for the Applicant submitted that the Notice of Dispute Resolution Proceeding, including the Application and notice of the hearing, were sent to the Respondent by registered mail and provided me with the registered mail tracking number. With the consent of the parties present I logged into the mail service provider’s website and verified that the registered mail was sent on February 11, 2020 and picked-up and signed for by the Respondent on February 21, 2020. I also viewed the signature, which matched the name of the Respondent, and confirmed through the mail service providers system that the registered mail was sent to the postal code for the dispute address. As a result, I find that the Respondent was sufficiently served the Notice of Dispute Resolution Proceeding on February 21, 2020.

At the request of the Applicant’s legal counsel, copies of the decision will be emailed to them at the email address provided in the hearing.

Preliminary Matters

At the outset of the hearing legal counsel for the Applicant stated that an Arbitrator with the Residential Tenancy Branch (the “Branch”) who recently heard a different dispute between the same parties rendered a decision stating that the Branch does not have jurisdiction. Legal counsel for the Applicant provided me with the file number for that matter for the purpose of allowing me to review that decision.

I have reviewed the previous Arbitrator’s decision rendered on March 4, 2020, and I find that the legal principle of *res judicata* applies to this matter. *Res judicata* is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties.

In their decision dated March 4, 2020, the previous Arbitrator found that the relationship between the parties is not one of a landlord and a tenant and that therefore the Branch does not have jurisdiction to hear disputes arising between the parties under the *Act*.

As a result of the above, I therefore decline to hear the claim made by the Applicant seeking recovery of unpaid rent, recovery of the filing fee, and an order of possession for the dispute address due to lack of jurisdiction. I encourage the parties to seek independent legal advice with regards to this matter.

Conclusion

I decline to hear the claim made by the Applicant on the basis of *res judicata* as the matter of jurisdiction has already been decided by a previous Arbitrator who determined that the Branch does not have jurisdiction under the *Act* to hear disputes arising between the parties.

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: March 10, 2020

Residential Tenancy Branch