

REVIEW DECISION

This is an application for review filed on February 11, 2009 by the landlords for the review of a Decision and an Order dated November 12, 2008 and received according to the Applicant for Review on February 2, 2009.

The applicants rely on section 79(2)(a) of the *Residential Tenancy Act*. Section 79(2)(a) provides that the director may grant leave for review if a party was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the party's control.

On October 3, 2008, the tenant served the landlords with the application for dispute resolution and the notice of hearing via registered mail and provided proof of such service during the hearing. The landlords acknowledge that a registered letter was delivered to them in early October but said that they did not accept it because the sender was not identified. Section 90 of the *Residential Tenancy Act* states that a document is deemed to be received on the 5th day after it is mailed. Based on the above, I find that the landlords were served with the application for dispute resolution and the notice of hearing regardless of whether they chose to accept delivery of such documents. Accordingly, I also find that the landlords have not proven that they were unable to attend the hearing because of circumstances that could not be anticipated and were beyond their control.

The applicants also rely on section 79(2)(c) of the *Residential Tenancy Act* which provides that the director may grant leave for review if a party has evidence that the arbitrator's decision or order was obtained by fraud.

Specifically, the landlords maintain that the tenant and his witnesses were lying about the landlords having collected an additional \$500.00 in security deposit from the tenant. The *Residential Tenancy Policy Guideline #24* states that a party alleging fraud must

prove the existence of new and material facts which were not known to the applicant at the time of the hearing. In this case, no evidence was adduced to indicate that the landlords did not know about the specific material fact at the time of the hearing. Accordingly, I find that the landlords have not proven that the dispute resolution officer's decision or order was obtained by fraud.

For the above reasons, I dismiss the application for leave for review. The original decision dated November 12, 2008 is confirmed.

Dated March 9, 2009