

## **REVIEW CONSIDERATION**

### **Introduction**

By application of March 12, the tenant seeks a Review Hearing on a Decision dated March 2, 2010 based on a Direct Request Proceeding under section 55(4) of the Act.

### **Issue(s) to be Decided**

Section 79 of the *Act* provides for the opportunity of a Review Hearing under circumstances in which the applicant:

1. Was unable to attend the original hearing for reasons beyond their control;
2. Has new and relevant evidence not available at the time of the original hearing;
3. Has evidence that the original decision was obtained by fraud.

In the case of a Direct Request Proceeding, only the last item would qualify for a Review Hearing and it would include innocent misrepresentations made on the basis of information that was not available at the time.

In addition, section 81 of the *Act* sets out reasons for which an application for a review hearing may be dismissed and includes consideration of whether any evidence the applicant would have had any effect on the ultimate decision.

Therefore, in considering this application for review, I must determine, first, whether, on the balance of probabilities the tenant would be entitled to a Review Hearing, and if so, whether the her submissions would have altered the outcome.

## **Background and Evidence**

In this instance, the applicant submits that the Dispute Resolution Officer did not have before him the evidence that the rent arrears upon which the decision and orders were based had been paid.

The decision was rendered on March 2, 2010 and the tenant makes claim that, in fact, she had paid the rent on February 26, 2010 by money order mailed on February 26, 2010. In fact, the landlord's application had been brought on the tenant's failure to pay the rent for February which was due on the first day of the month.

Evidence submitted by the landlord stated that the Notice to End Tenancy for unpaid rent had been served on the tenant by posting on her door on February 8, 2010. As the notice was served by posting, it is deemed by section 90(c) of the *Act* to have been served three days later, that being February 11, 2010.

The Notice to End Tenancy provides that the tenant may extinguish the notice by paying the rent within five days or the tenant may contest the notice by making application for dispute resolution within five days, meaning the tenant would have to have taken wither action by February 16, 2010.

As noted, the tenant did not make payment until February 26, 2010 and was, therefore, out of time, to extinguish the notice and she did not make application to dispute it. Therefore, pursuant to section 46(5) of the *Act*, and reiterated on the Notice to End Tenancy, the tenant was conclusively presumed to have accepted the end of the tenancy on the date stated on the notice and the matter was then appropriately dealt with by the Direct Request Proceeding.

The tenant makes further claim that she did not pick up the registered mail advising her of the Direct Request Proceeding until March 5, 2010. The landlord provided proof of the registered mail with the application for the direct request proceeding showing that it had been sent on February 18, 2010. Section 89 of the *Act* provides that a party may provide notice of a hearing by registered mail and section 90 provides that such notice is deemed to have been served five days later. Therefore, I find that the tenant was lawfully served.

The tenant make reference to deficiencies in the rental unit and disturbance by others, but those were not salient to the landlord's application for unpaid rent and cannot be considered in a tenant's application for a Review Hearing.

## **Analysis**

I find that the tenant did not make payment of the rent within five days of receiving the notice to end tenancy.

Section 81(1)(b)(iii) of the *Act* states, among the reasons for which an application for review may be dismissed, is one which, "...discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied."

Therefore, on the facts stated in the landlord's original application and on the facts brought forward in the tenant's application for review, I find that there is no evidence to warrant a Review Hearing.

## **Conclusion**

Therefore, the tenant's application for Review Hearing is dismissed and the Decision and Orders of March 2, 2010 remain in force and effect.

The late rent payment may vary the amount owed by the tenant to the landlord, but the Provincial Court would provide the tenant an opportunity to present evidence of payments made if the landlord were to enforce the Monetary Order through the Court.

**Date of Decision:** March 18, 2010