



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

Introduction

This matter was originally dealt with by way of the Direct Request Proceeding and a decision and order were issued on January 26, 2012.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of the decision. The application must contain reasons to support one or more of the grounds for review:

1. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
2. A party has new and relevant evidence that was not available at the time of the original hearing.
3. A party has evidence that the director's decision or order was obtained by fraud.

Issues

Whether the original Dispute Resolution Officer's decision was obtained by fraud.

Facts and Analysis

The application contains information under Reasons Number 3

To prove an allegation of fraud the parties must show that there was a deliberate attempt to subvert justice. A party who is applying for review on the basis that the Dispute Resolution Officer's decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the Dispute Resolution Officer, and that that evidence was a significant factor in the making of the decision. The party alleging fraud must allege and prove new and material facts, or

newly discovered and material facts, which were not known to the applicant at the time of the hearing, and which were not before the Dispute Resolution Officer, and from which the Dispute Resolution Officer conducting the review can reasonably conclude that the new evidence, standing alone and unexplained, would support the allegation that the decision or order was obtained by fraud. The burden of proving this issue is on the person applying for the review. If the Dispute Resolution Officer finds that the applicant has met this burden, then the review will be granted.

In this case the applicant alleges that the landlord never gave her notice of any action being taken; however the original Dispute Resolution Officer found that the applicant had been properly served with notice of the Direct Request Proceeding via registered mail.

Documents sent by registered mail are deemed served five days later even if the parties fail to claim or refuse to accept the registered mail.

Therefore it is my decision that the applicant has not met the burden of proving that the original dispute resolution officer's decision was obtained by fraud.

Decision

This application for review is dismissed

The decision made on January 26, 2012 stands.

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: February 14, 2012.

Residential Tenancy Branch