



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR MNSD

Introduction

On February 27, 2012, a hearing was conducted to resolve a dispute between these two parties. The landlord had applied for a monetary order. The tenant did not attend the hearing. The Dispute Resolution Officer granted the landlord's application. The tenant has applied for a review of this decision.

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.

The applicant relies on sections 79(2)(a) and (c) of the *Residential Tenancy Act* (the "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. Section 79(2)(c) 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.

Issues

Was the tenant unable to attend the hearing due to circumstances that were beyond her control? Was fraudulent evidence presented at the hearing?

Facts and Analysis

Unable to Attend

In order to meet this test, the application must establish that the circumstances which led to the inability to attend the hearing were both:

- beyond the control of the applicant, and
- could not be anticipated.

In her application, the tenant states that she did not receive the notice of hearing and therefore was not aware of the landlord's application and the date and time of the hearing. During the hearing, the landlord testified that he sent the notice of hearing by registered mail to an address that he had observed the tenants coming and going from.

The tenant states in her application that this address used by the landlord is not her mailing address and that she was not at that address for the period of December 10 to January 05, 2012. The returned registered mail is filed into evidence stating that it was unclaimed and is postmarked December 16, 2011.

The tenant also states that the landlord mailed the monetary order to her mailing address which she acknowledges having received. She also states that upon receipt of the order, was when she learnt that there had been a hearing on February 27, 2012.

The tenant states that if she had attended the hearing she would have presented a copy of her notice to end tenancy which was served on the landlord in a timely manner. The tenant filed a copy of this notice along with a signed witness statement confirming the date of service to the landlord.

Based on the above, I find that the landlord served the notice of hearing to an address that was not the mailing address of the tenant. I am satisfied that the tenant was not adequately served the notice of hearing package and therefore was unable to attend.

The tenant also states in her application that had she attended the hearing she would have testified that, the she gave the landlord adequate notice to end the tenancy and that she was not responsible for the loss of income suffered by the landlord for the month of October 2011.

Based on the evidence in front of me, I find that if this evidence was presented at the hearing, it could have changed the final outcome.

I am satisfied that the applicant was unable to attend the hearing because she did not receive the notice of hearing. Therefore, I grant the tenant's application for leave for review. I hereby order that the decision dated February 27, 2012 be suspended until a review hearing has been completed.

The review hearing will be conducted by conference call. The parties will be notified of

the date of the review hearing by the Residential Tenancy Office.

Both parties must provide to each other copies of the relevant information and/or documents to which they may refer at the hearing. Service must be by registered mail or personal service.

Failure to attend the hearing at the scheduled time, with all relevant evidence and/or witnesses, will result in a decision being made on the basis of any information before the Dispute Resolution Officer and the testimony of the party in attendance at the hearing.

Decision

The decision dated February 27, 2012 is suspended until a review hearing has been completed.

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: April 13, 2012.

Residential Tenancy Branch