



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: O

Introduction

On April 25, 2012, a hearing was conducted to resolve a dispute between these two parties. The landlord had applied for an additional rent increase. 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 (b) 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)(b) provides that the director may grant leave for review if a party has new and relevant evidence that was not available at the time of the original hearing.

Issues

Was the tenant unable to attend the hearing because of circumstances that could not be anticipated and were beyond his control? Does the tenant have new and relevant evidence that could change the decision?

Facts and Analysis

Unable to Attend

In order to meet this test, the applicant 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 his application for review on the grounds that he was unable to attend, the tenant states that he did not receive the notice of hearing because he chose to reject it at the post office. The tenant states that the reason for rejecting the package was because he had had past problems related to a personal business and therefore, he had developed an aversion to registered letters and rejecting them became a matter of course.

The tenant also states that he believed that the registered letter might be another form of harassment from the landlord and that he “never imagined” that the package would contain a notice of hearing.

At the hearing, the landlord provided affirmed testimony and evidence in the form of a receipt and a tracking number. The landlord also filed a copy of an email from the tenants acknowledging that they had been notified of the registered mail but that they “never accept registered mail”.

Based on the affirmed testimony and documentary evidence of the landlord, the Dispute Resolution Officer found that the tenant was duly served pursuant to the provisions of section 89(1) of the *Act* and that failure to accept delivery of documents sent by registered mail does not negate the service provision of Section 89(1) of the *Act*.

I find that the tenant was properly served with the documents and by his decision to not collect the registered mail, chose not to participate in the hearing. Accordingly I find that the application for review on this ground must fail.

New and Relevant Evidence

In order to successfully argue that a review hearing should be granted on the grounds of new and relevant evidence, the applicants must prove that there is new evidence that is relevant and that it was unavailable at the time of the hearing.

On this ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, the applicant has filed a notice of rent increase that he received on May 31, 2012.

In the decision dated May 07, 2012 and corrected on May 23, 2012, the Dispute Resolution Officer directed the landlord to serve the tenant with a notice of rent increase and if served in May 2012 will take effect September 01, 2012.

I find that the landlord complied with the Dispute Resolution Officer's direction by serving the tenant with a notice of rent increase. While this evidence was not available at the time of the hearing, it simply replaces the original notice of rent increase which was presented and discussed during the hearing. The difference between the two notices is the effective date of the rent increase. Even though this notice that the tenant has filed with his application for review was not in existence at the time of the hearing, I find that this evidence has no effect on the decision.

Section 81(1) (b) (iii) of the Act allows the director to dismiss an application for review if the application 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. Accordingly, I find that the application for review on this ground must fail.

Decision

For the above reasons I dismiss the application for leave for review.

The decision made on May 07, 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: June 22, 2012.

Residential Tenancy Branch