



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR OPR

### Introduction

The Decision/Order under review is a decision on the Landlord's application for an Order of Possession and a Monetary Order for unpaid rent. The Landlord's application was granted and an Order of Possession was provided to the Landlord. The Tenant admits receipt of the Decision on December 2, 2012.

Division 2, Section 79(2) of the *Residential Tenancy Act* provides that 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 following 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 Tenant applies for review on grounds 1. and 3. as set out above.

### Issues

Was the Tenant unable to attend the Hearing because of circumstances that were beyond the Tenant's control?

Does the Tenant have evidence that the Director's decision or order was obtained by fraud?

### Facts and Analysis

The Tenant provided the following copies of documents in support of the Application for Review Consideration:

- A copy of the Decision and Orders dated November 21, 2012; and

- A one page document indicating when rent was paid and how much rent was paid.

In addition, after the Application for Review Consideration was filed, the Tenant provided additional information on December 5, 2012;

- Copies of tracking information for registered mail documents that were sent to the Tenant on October 6 and October 19, 2012;

Was the Tenant unable to attend the Hearing because of circumstances that were beyond the Tenant's control?

The Arbitrator found that the Tenant had been duly served with the Notice of Hearing documents by registered mail sent October 19, 2012. Section 89(1)(c) of the Act allows service in this manner. Section 90 of the Act deems that such service is effective 5 days after mailing the documents.

The Tenant's own evidence indicates that:

- The attempted delivery of the documents was made on October 22, 2012, and a Notice card was left indicating where the item could be picked up.
- A final Notice card was left for the Tenant on November 6, indicating that the item would be returned to the sender if the Tenant did not collect it.
- On November 10, the item was returned to the Landlord.

A party cannot avoid service by refusing or declining to accept delivery of documents that are provided in accordance with the provisions of the Act. I do not find that the Tenant did not attend the Hearing because of **circumstances that were beyond the Tenant's control**, and therefore I find that the Tenant's Application for Review Consideration does not disclose any evidence to substantiate this ground for review.

Does the Tenant have evidence that the Director's decision or order was obtained by fraud?

In the Application for Review Consideration, the Tenant wrote, in part:

*Which information submitted for the initial hearing was false and what information would have been true?*

"I don't have received rental increase notice. I don't know the story of this hearing. I do not have the information they provided. What I know is the agent wants to sell the place, and market is very slow. He trying to use increasing rent to force me leave. The landlord's friend has said the landlord didn't give him permit."

*How do you think the false information was used to get the desired outcome?*

- "1. At beginning of April, the landlord's agent (both selling agent and rent agent) put the apartment on the market to sell.
2. They were not happy and didn't respect my time schedule when I didn't work at beginning of April, I told him everyday is OK. After I worked, I wish them respect my time when there is family member at home.
3. On May 03, agent wanted to kick me out in order to sell the place.
4. November 24, 2012, I waited and let them in to see the place to buyers."

(reproduced as written)

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. It is not sufficient to simply state that the decision was obtained by fraud.

I find that the Tenants' application does not disclose sufficient new and material evidence that the Decision and Order were obtained by fraud. In this case, the Order of Possession was granted for unpaid rent. The Landlord satisfied the Arbitrator that the Tenant had been served with the Notice of Rent increase, and also that the Tenant had received the Notice to End Tenancy. I note that the Notice to End Tenancy was sent by registered mail on October 6, 2012. According to the Tenant's own documentary evidence:

1. Attempted delivery was made on October 10 2012 and a Notice left indicating where the document could be picked up.
2. A final Notice was left for the Tenant on October 17, 2012.
3. The Tenant **refused delivery** on October 19, 2012.

With respect to Tenant's claim that the Landlord used false information to get the desired outcome, even if I accepted that the Landlord was seeking to evict the Tenant in order to sell the rental unit, which I do not, this would have had no material effect on the Decision because **the eviction was for unpaid rent**.

A party cannot avoid service by refusing or declining to accept delivery of documents that are provided in accordance with the provisions of the Act.

Overall, I find that the Application for Review Consideration does not disclose sufficient evidence of a ground for review. The original Decision and Orders dated November 21, 2012, are therefore confirmed.

### **Conclusion**

The Tenant's Application for Review Consideration is **dismissed**.

The original Decision and Orders dated November 21, 2012, are confirmed.

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: December 10, 2012.

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Residential Tenancy Branch