



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: FF MND MNDC

This is an application by the landlord for a review of a decision rendered by an Arbitrator on December 20, 2012.

The applicants apply for review under Section 79 of the *Residential Tenancy Act* on the following grounds:

1. A party was unable to attend the original hearing due to circumstances that could not be anticipated and that were beyond his or her control.
2. A party has evidence that the director's decision or order was obtained by fraud.

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.

An arbitration hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.

FINDINGS

In the application for review, the tenants state they were not served with the Notice to End Tenancy or the Application for Dispute Resolution containing the hearing notice. In the Decision rendered in this matter the evidence was that this tenancy ended in March 2012 however the landlord did not file and serve his application seeking damages until October 1, 2012. The tenant submits that he left Canada in August 2012 to work and he therefore never knew about the application or the hearing until he received the Decision rendered December 20, 2012 on December 30, 2012.

I find that a forwarding address is not an address whereby the tenant can be served with an Application for Dispute Resolution indefinitely. In this case the tenancy ended in March yet the landlord did not file and serve an application seeking to make his claims until October, almost 6 full months after the tenancy ended. Given this, I find it reasonable to grant a review in this matter.

The review hearing will be held by telephone conference call on February 26, 2013 at 2:30 p.m. Details of the review hearing are set out in the two copies of a Notice of Hearing are enclosed. The tenant is required to serve the landlord with a copy of the Notice forthwith and be able to provide proof of service on the landlord at the new hearing date.

The decision and order rendered December 20, 2012 is suspended.

Dated: January 28, 2013.