



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute codes: MNR OPC OPR

### Introduction

This is an application by the tenant for a review of the decision of an Arbitrator dated April 11, 2013. The Tenant did not attend the hearing as the Tenant said he was not served the hearing documents by the Landlord. The Decision states the Landlord said they served the Tenant by personal delivery. The application was made by the Landlord for an Order of Possession due to unpaid rent and for cause and a Monetary Order for \$2,520.00 in unpaid rent and loss rental income. The Arbitrator found for the Landlord and awarded an Order of Possession, dated April 11, 2013, for two days after the Order was served on the Tenants and a Monetary Order for \$2,520.00 dated April 11, 2013.

In the decision dated April 11, 2013 the Arbitrator accepted service of the 10 day Notice for unpaid rent and the written evidence shows a Proof of Service stating the Tenant was personally served on March 8, 2013 at 10:25 p.m. As well the proof of serve is signed by a witness. Further it is noted in the decision that the Tenants did not pay the unpaid rent or make an application to dispute the 10 Day Notice to End Tenancy; therefore the Tenants were found conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

This is an application by the tenant for a review of the decision and orders of the Arbitrator dated April 11, 2013. The Tenants have indicated in their review application, the Landlord obtained the decision and Orders by fraud.

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

The tenant's application for a review of the previous Arbitrator's decisions is on the grounds that the tenants have evidence that the decision and orders were obtained by fraud. Is the tenants' application justified?

### Facts and Analysis

The Tenants applied for a review based on their belief that the Landlord obtained the decision and orders with fraudulent information. The Tenants said in their review application that the Landlord did not serve them the hearing documents and therefore they were unable to attend the hearing. The Tenant says in his review application the Landlord lied about serving the Tenants the hearing documents. As a result the Landlord was successful and the Tenants were evicted from the rental unit.

The Tenant has not provided any corroborating evidence to support his claims. Although the Tenant has provided a number of pages of script describing the situation and what proof he **could** provide, there is no corroborating evidence submitted in the review application that proves the Landlord obtained the decision and Orders by fraud. The burden of proving a claim lies with the applicant (the Tenants) and when it is just the applicant's word against that of the respondent's evidence that burden of proof is not met. I find that the Tenants' written submission is just the Tenant's opinions and opinions do not meet the burden of proof. Corroborative evidence must be submitted to support a claim of fraud and as there is no corroborating evidence that the Landlord was fraudulent. The evidence submitted by the Tenant is supportive to the Tenants' position but it is only his opinions and does not prove the Landlord was fraudulent. I find the Tenant has not meet the burden of proof to show the Landlord obtained the decision and orders by fraud and I find the Tenant has not established grounds for a review hearing.

Consequently, I find the Tenant has not established grounds to be awarded a review hearing. The decision of Arbitrator states that the Landlord is entitled to the Order of Possession for 2 days after service on the Tenants and a Monetary Order, for \$2,520.00. The decision and Orders of April 11, 2013 stand in full effect and the Tenant's application for a review hearing is dismissed without leave to reapply

Decision

In considering the evidence on the Tenant's review application, I find that the Tenant has not established grounds to be granted a review hearing. Consequently I dismiss the Tenant's application for a Review Hearing. The Arbitrator's decision and orders stand in effect as stated in the original decision of April 11, 2013.

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: May 8, 2013

---

Residential Tenancy Branch