



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute codes: FF MNDC MNR OPR

### Introduction

The hearing for which the tenants seek a review hearing was conducted on May 16, 2013 on the landlord's application for an Order of Possession and a monetary award pursuant to a Notice to End Tenancy for unpaid rent served in person on April 5, 2013. In his decision of May 16, 2013, the arbitrator found that the tenants had a rent shortfall from April 2013 of \$200, had not paid the \$660 or \$20 late fee May 2013, and he awarded recovery of the landlord's \$50 filing fee for a total award of \$930.

The arbitrator also issued the landlord with an Order of Possession effective two days from service.

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

In the present matter, the tenants seek a review hearing on the grounds that they could not attend the hearing for reasons beyond their control as they had not been served with the Notice of Hearing.

### Facts and Analysis

In his decision of May 16, 2013, the arbitrator made specific note that the tenants had failed to appear even though they had been served in person with the Notice of Hearing on April 17, 2013.

I would note that the landlord in question is a professional and well habituated to the requirements of dispute resolution applications. I find it unlikely that they would have overlooked the fundamental requirement of service of the notice and given evidence to the contrary at the hearing.

In addition, section 81 of the Act sets out reasons for which an application for review hearing may be dismissed including section 81(1)(b)(iii) which provides for dismissal when 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,...”

The original hearing dealt with unpaid rent which provides for little or no discretion on the part of the arbitrator. Section 26 of the Act states that rent must be paid when it is due. Section 46 of the Act states that tenants may extinguish the notice by paying the late rent within five days of receiving the notice or they may make application to contest it. If the tenants do neither, they are conclusively presumed to have accepted that the tenancy ends on the date set by the notice, April 15, 2013 in the present matter.

In the application for review hearing, the tenants have made no claim that they paid the rent arrears for April 2013 or any of the rent for May 2013.

Therefore, even if this matter were to be heard again, I find no basis on which the original decision could be set aside or varied.

Therefore, the application for review hearing is dismissed.

### Decision

This application for review hearing provides no claim or evidence that would result in a different outcome if this matter were to be heard again. Therefore, it is dismissed.

The decision and orders of May 16, 2013 stand.

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 03, 2013

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Residential Tenancy Branch