



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: FF MNR OPR

Introduction

The tenant has applied for a review consideration of a decision dated May 30, 2013, which granted the landlord an order of possession.

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 tenant has applied on ground 1 the review consideration.

Issues

1. Was the tenant unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control?

Facts and Analysis

The tenant writes in their application that they were unable to attend the hearing because "Was informed in any manner either by mail or by phone".

[Reproduced as written.]

The tenant writes in their application what testimony or additional evidence would you have provided if you were at the hearing, "Was not contacted in any way by letter, or by phone. Additional letter with more circumstances conveyed." [Reproduced as written.]

In the attached additional letter, the tenant acknowledged that they received the notice to end the tenancy. The tenant further writes that they have been leaving messages on (DS) cell phone constantly, to locate stepfather, to resolve this situation, with absolutely no response to pay any kind of rent to my stepfather.

At the hearing on May 30, 2013, the arbitrator, heard evidence that the tenant was served by registered mail on May 3, 2013, a Canada post tracking number and a Canada post – track – report was filed in evidence. Based on that evidence the arbitrator found that the tenant had been properly served as failure to accept the documents does not change the service provisions of the Act.

Even if I accept the tenant evidence that they were unable to attend as they did not receive, the notice of hearing. The tenant has discloses no basis on which the decision or order of the director should be set aside or varied.

In this case, the tenant acknowledged that they received the notice to end tenancy. There was no evidence submitted by the tenant that they filed an application for dispute resolution or paid the full amount of rent owed, within five day after receiving the notice as required by the Act. Therefore, under section 46(5) of the Act, the tenant is conclusively presumed to have accepted that the tenancy ended on April 2, 2013.

Therefore, I find the tenant has failed to prove that the order of possession given to the landlord on May 30, 2013, would be set aside or varied

Decision

Based on the above, the application and on a balance of probabilities, I find the tenant's application must be dismissed.

Therefore, I find the decision and order made on May 30, 2013, stand and remain in full force and effect. The tenant's application for review is dismissed.

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 24, 2013

Residential Tenancy Branch