



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes ERP, RP, MNDC, FF

Introduction

On May 6, 2013 a hearing was held to deal with a tenant's Application for Dispute Resolution and a decision and Monetary Order were issued in favour of the tenant that same day. The landlord filed an Application for Review Consideration on the basis he was unable to attend the original hearing because he was not served with the Notice of Hearing or the tenant's Application for Dispute Resolution. A review hearing was granted and scheduled for 1:30 p.m. on this date. Only the landlord appeared at the review hearing.

In granting the review hearing, the landlord was ordered to serve the tenant with the Notice of Review Hearing within three days of receiving the decision, along with a copy of the Application for Review Consideration.

The landlord testified that he received the review consideration decision and Notices of Review Hearing from the Residential Tenancy Branch only last week and that the tenant had vacated the rental unit before the landlord received the documents. The landlord also confirmed that he has not received a forwarding address for the tenant. As a result, the landlord asserted that he has been unable to serve the tenant with the Notice of Review Hearing.

Issue to be determined

Should the decision and Monetary Order issued May 6, 2013 be confirmed, varied or set aside?

Background and Analysis

When a respondent does not appear at a dispute resolution hearing, the Applicant bears the burden to prove the respondent was served with the hearing documents in a manner that complies with the Act. The landlord respondent did not appear at the

original hearing and the Arbitrator relied upon the tenant's undisputed testimony that the tenant personally served the landlord with the hearing documents. That submission has now been disputed by the landlord. Without further evidence to prove service of the original hearing documents upon the landlord I find the appropriate outcome is to dismiss the tenant's original application with leave to reapply. As a result, the decision and Monetary Order issued May 6, 2013 are set aside.

Conclusion

The decision and Monetary Order issued May 6, 2013 are set aside and are of no effect. The tenant remains at liberty to reapply within the times limits established by the Act.

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 19, 2013

Residential Tenancy Branch

