



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

This is an application by the landlord to review the decision and order of the arbitrator dated May 21, 2013 relating to the above-noted rental unit. In the decision under review the tenant was granted a monetary award and the landlord was ordered to return the tenant's bedroom furniture.

I refer to section 79(2) of the Act which provides that a decision or order of the director may be reviewed only on one or more of the following grounds:

- a. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control;
- b. A party has new and relevant evidence that was not available at the time of the original hearing;
- c. A party has evidence that the director's decision or order was obtained by fraud.

The landlord applied for review on the basis of the third ground, namely: that the decision was obtained by fraud. He said that the tenant submitted false information that the hearing documents were sent to him by registered mail. He said in the application that:

"Hearing document's from tenant sent registered mail "

"Mail receipt numbers were provided by tenant "rto

#1 False information was submitted ?

These 'tracking tag's' have a 'bar code'-check on Computer

Tofino Post office has no record/any signature of this event,,

Has RTO conducted this CHECK ?

(reproduced as written)

The landlord submitted an affidavit wherein he said that on or about June 1, 2013, he received the decision of the Residential Tenancy Branch in this proceeding by regular mail. He said that the decision stated that he was properly served by registered mail on

February 26, 2013. The landlord stated that: "I verily swear that I have no memory of receiving hearing documents and have had no notice of this proceeding."

At the original hearing the tenant tendered into evidence a Canada Post receipt as proof that the landlord was served with the application and notice of hearing by registered mail on February 26, 2013. Upon receipt of this review application I went onto the Canada Post website to track the item number on the receipt and found delivery of the mail was attempted on February 27, 2013. It was noted that: "Item refused by recipient. Item being returned to sender".

Sections 89(1) & (2) of the Act provide that one of the ways in which an application for Dispute Resolution or an application for an order of possession may be served on a landlord is by registered mail to the address at which the person resides or to the address where he carries on business as a landlord. Section 90 of the Act provides that a document served by mail in accordance with section 89 is deemed to be received on the 5th day after it is mailed.

On the basis of the foregoing I do not accept the landlord's claim that he was not served with a notice of hearing. The evidence clearly shows that the tenant served the documents on the landlord by registered mail to his address, but that the landlord refused to accept pick up the registered item from the post office. Refusal to accept a registered mail delivery from the post office does not constitute a ground for failing to attend a hearing and the landlord has not shown that there were circumstances that could not be anticipated and that were beyond his control that prevented him from attending the hearing, or that the decision under review was obtained by fraud. The landlord has not offered any evidence to rebut the presumption of receipt on the fifth day after mailing in section 90 of the *Residential Tenancy Act*. I therefore dismiss the application for review on the basis that the application discloses no evidence of a ground for review.

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: July 08, 2013

Residential Tenancy Branch

