



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW DECISION**

This is an application by the tenant to review the decision and order of the Arbitrator dated May 9, 2013 relating to the above-noted rental unit.

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 tenant applied for a review on the basis of all three grounds. With respect to the first ground, namely: that the tenant was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond his control, the tenant said that he was never notified of the hearing. He became aware of the proceeding after he received an e-mail from the landlord on June 13, 2013. The tenant obtained a copy of the decision from the Residential Tenancy Branch on June 17, 2013. The tenant's address noted on the Application for Review Consideration is not the address where the landlord sent copies of the Application for Dispute Resolution and Notice of Hearing. At the original hearing the landlord submitted evidence that he served the tenant by registered mail sent on February 18, 2013. Canada Post records revealed that the registered mail was not delivered to the tenant because he was not located at the address provided by the landlord. The mail was returned to the sender, but, according to the Canada Post records it was never returned and was eventually sent to the undeliverable mail office.

On the basis of the foregoing I accept the tenant's claim that he was not served with a notice of hearing. I find that the tenant was unable to attend the hearing on May 9, 2013 due to circumstances that were unavoidable and beyond his control. I therefore grant the application for review and I direct that the review proceed by conducting a new hearing. The original decision and order are suspended pending the outcome of the review. In light of my finding on the first ground it is unnecessary for me to address the applicant's submissions on the second and third grounds for review.

I enclose with this decision copies of a notice of hearing for the review hearing to be conducted by conference call on August 13, 2013 at 1:00 P.M. The tenant must serve the landlord with a copy of this decision and the enclosed notice of hearing either personally or by registered mail pursuant to section 89 (1) of the *Residential Tenancy 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: July 08, 2013

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Residential Tenancy Branch

