



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

This review consideration decision is in response to an Application for Review Consideration filed by the Tenant pursuant to section 79 of the *Residential Tenancy Act* (Act). Specifically, the Tenant is requesting a review of the decision made by an Arbitrator, on August 02, 2013, in which he granted the Landlord's application for an Order of Possession, a monetary Order for unpaid rent and the cost of filing the Application for Dispute Resolution.

The Tenant is requesting the review on the basis that she was unable to attend the hearing because of circumstances that could not be not be anticipated and were beyond her control; she has new and relevant evidence that was not available at the time of the original hearing; and she has evidence that the director's decision or order was obtained by fraud.

Section 79 of the *Act* reads:

- (1) A party to a dispute resolution proceeding may apply to the director for a review of the director's decision or order.
- (2) A decision or an 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.

Issues

Has the Tenant established ground for review of the Arbitrator's decision dated August 02, 2013?

Facts and Analysis

In support of her application for review on the basis that she was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond her control, pursuant to section 79(2)(a) of the *Act*, the Tenant declared:

- That she did not know the Landlord had filed an Application for Dispute Resolution
- That she had disputed the “eviction notice” and expected to have that matter determined at a hearing that was scheduled for September 09, 2013
- That the Landlord sends “mail to herself”
- That she has no access to the Landlord’s mail box
- That she has no access to her own mail because her rental unit is an “illegal suite”
- That the Landlord receives her mail
- That the Landlord returns her mail indicating she had moved.

In his decision, the Arbitrator noted that the Landlord had served the notice of hearing documents and the Application for Dispute Resolution to the Tenant, via registered mail, on July 10, 2013. He noted that the Landlord testified that she had confirmed online with Canada Post that the Tenant signed for the hearing documents on July 10, 2013.

A copy of Canada Post document in the file shows that registered mail was mailed on July 10, 2013; that a delivery was attempted on July 10, 2013; that on the morning of July 10, 2013 a notice card was left which informed the recipient of where the mail can be picked up; that the mail was delivered on the afternoon of July 10, 2013; and that a person with the same first initial and surname of the Tenant signed for the mail when it was delivered. On the basis of this information I find it reasonable to conclude that the mail was picked up from a Canada Post location.

It is my understanding that when registered mail is picked up from a Canada Post location the recipient is required to provide proof of identity. I therefore find, on the balance of probabilities, that the person who picked up and signed for the mail on the afternoon of July 10, 2013 provided identification that showed she was P. Griffin. I therefore find, on the balance of probabilities, that the Tenant did receive the registered mail that was sent on July 10, 2013.

As the Tenant has given no reasonable explanation for the registered mail that she received on July 10, 2013, I find that this mail, in all probability, contained the Application for Dispute Resolution that the Landlord declared was mailed on that date.

In support of her application for review the Tenant argued that the Landlord should have served her in person. The Landlord was under no obligation to serve the Tenant in person, since she was able to serve her by registered mail.

As the preponderance of evidence shows that the Tenant did receive the Application for Dispute Resolution on July 10, 2013, I find that the Tenant has submitted insufficient evidence to show that she was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond her control.

In support of her application for review on the basis that she had new and relevant evidence that was not available at the time of the original hearing, pursuant to section 79(2)(b) of the *Act*, the Tenant argued that she should be allowed to present her evidence at the dispute resolution hearing on September 09, 2013. The Tenant does have the right to present evidence at the hearing on September 09, 2013. She also had the opportunity to present that evidence at the hearing on August 02, 2013. I find that the Tenant has not established that she has new and relevant evidence that was not available at the time of the original hearing.

In support of her application for review on the basis that the Tenant has evidence that the original decision or order was obtained by fraud, the Tenant declared that the Landlord filed and obtained an Order of Possession and a monetary Order even though she was aware the Tenant was disputing the Notice to End Tenancy and she was aware there was a hearing scheduled for September 09, 2013.

I find that the Tenant has not established that the Arbitrator's decision was obtained by fraud. Both the Landlord and the Tenant had the opportunity to appear at the hearing on August 02, 2013 and to discuss the merits of the Notice to End Tenancy on that date or to request the hearing on August 02, 2013 be joined with the hearing that was scheduled for September 09, 2013. The Landlord's decision to address the matter on August 02, 2013 does not, in my view, suggest that the Landlord was misleading the Arbitrator in any way.

After reviewing all of the relevant evidence provided by the Tenant in her Application for Review Consideration, I find that that she has not satisfied the legislative requirements for a review, pursuant to section 79 of the *Act*.

Decision

Section 81 of the *Act* reads:

- (1) At any time after an application for review of a decision or order of the director is made, the director may dismiss or refuse to consider the application for one or more of the following reasons:
 - (a) the issue raised by the application can be dealt with by a correction, clarification or otherwise under section 78 [*correction or clarification of decisions or orders*];
 - (b) the application
 - (i) does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely,
 - (ii) does not disclose sufficient evidence of a ground for the review,

(iii) 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, or

(iv) is frivolous or an abuse of process;

(c) the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

(2) A decision under subsection (1) may be based solely on the written submissions of the applicant.

I dismiss the Tenant's application for review, pursuant to section 81(1)(b)(ii) of the *Act*, as she has failed to disclose sufficient evidence of a ground for review.

The Arbitrator's decision and Orders of August 02, 2013 remain in full force and effect.

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: August 13, 2013

Residential Tenancy Branch