



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

This application seeks a review of a hearing conducted on July 17, 2013 on the landlord's application for an Order of Possession and a Monetary Order following service of a Notice to End Tenancy for unpaid rent served by registered mail sent on June 3, 2013.

In the result, the landlord withdrew the request for an Order of Possession as the tenants had moved some time between June 3, 2013 and June 10, 2013 but proceeded to win a monetary award for the \$600 for June 2013 rent and \$50 filing fee.

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.

Issues

In the present matter, the tenants seek a review on the grounds that they were unable to attend the hearing for reasons that were beyond their control and could not be anticipated, specifically, that they had not received the Notice of Hearing.

Facts and Analysis

During the original hearing, when the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing, the arbitrator

accepted the evidence of the landlord that she had served the Notice of Hearing by registered mail sent on June 19, 2013.

Section 90(a) of the Act states that documents which are served by mail are deemed to have been received five days later. In the present matter, while the tenants are thought to have moved before the mail was sent, they were aware by virtue of the notice to end tenancy that an action was pending and notice was imminent. For that reason, and because they have a post office box number, I find that the landlord met the service requirements under the Act and it was within the tenants' control to receive the notice by providing a forwarding address to the landlord or to the post office.

Moreover, section 81(b)(iii) of the Act empowers the director's delegate to dismiss an application for review in circumstances in which it:

"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."

The tenancy is question was for a fixed term set to end on June 30, 2013. Therefore, the tenants were absolutely obliged to pay the rent for June 30, 2013 month under section 26 of the Act.

Accordingly, in the absence of any claim or proof from the tenants that they paid the full rent due on for June 2013, I find no reason in the application that would permit the decision of July 17, 2013 to be set aside or varied on review.

Decision

The application for a review hearing is dismissed.

The decision and order issued on July 17, 2013 remain in 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