



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: FF MNDC MNSD

Introduction

This is an application by the landlord for a review of the decision of Arbitrator dated July 9, 2013. The landlord did not attend the hearing on July 9, 2013, as the landlord indicated in his review application he did not know the hearing was taking place as he had not received the application and hearing package. Arbitrator's decision of July 9, 2013 states the landlord was deemed to have been served by registered mail as the tenant provided a tracking receipt from Canada Post for the registered mail package sent to the Landlord on April 18, 2013. Arbitrator accepted the tenant's evidence as proof that the landlord was deemed to be served on April 23, 2013, 5 days after posting the registered mail package as required by section 89 of the Act.

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

The landlord's application for a review of the previous Arbitrator's is on the grounds that the landlord was unable to attend the original hearing because of circumstances beyond his control. Is the landlord's application justified?

Facts and Analysis

The landlord applied for a review on the basis that he was not served the Application and hearing package for Dispute Resolution by the tenant. The landlord says as a

result he did not know when the hearing was and then he was out of the country when the hearing took place on July 9, 2013. The tenant's evidence shows he served the landlord with the Application and Hearing package by registered mail in compliance with section 89 of the Act. Arbitrator accepted the service of the Application and Hearing package to the landlord based on a Canada Post receipt and tracking information that the tenant provided. The landlord was deemed to be served 5 days after the registered mail package was sent or on April 23, 2013. This was seventy seven days before the hearing date of July 9, 2013 and before the landlord went out of the country, which complies with the requirement of serving the application 5 days prior to the hearing. If the landlord did not accept the registered mail package or did not pick it up it does not mean that the landlord is not deemed to be served. The landlord could have picked up the registered mail package prior to the original hearing. I find the landlord was deemed to be served and I dismiss the landlord's review application.

Decision

In considering the evidence of the landlord's review application, I find that the landlord has not established grounds to be granted a review hearing. Consequently I dismiss the landlord's application for a Review Hearing. Arbitrator's decision and orders stand in effect as dated in the original hearing of July 9, 2013.

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 19, 2013

Residential Tenancy Branch