



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

This is an application filed by the tenant for review of the September 6, 2013 decision and orders of an Arbitrator. The applicant relied on section 79(2)(c) of the *Residential Tenancy Act* (the "Act") which provides that the director may grant leave for review if a party has evidence that the decision was obtained by fraud.

The decision under review was the outcome of the landlord's direct request application for an order for possession and a monetary order for unpaid rent. The landlord was granted an order for possession and a monetary order for unpaid rent in the amount of \$1,800.00.

In his application for review the tenant claimed that she was not served with any notice of the proceeding by the landlord and only learned about it on September 18, 2013 when an "Order to Vacate" was given to her by a person who found the document in a nearby school yard.

The tenant claimed that the Arbitrator's decision was obtained by fraud. In the review application she said:

No other documents were served Accept this. The landlord gave me notice in May, 2013 saying that lease would not be renewed Sept 30, 2013 as he was moving in. Was never served with papers. (reproduced as written)

The tenant did not provide any documentary evidence in support of her application and she did not provide any evidence of rent payments.

The documents submitted by the landlord in support of the original direct request application included proof that the tenants were served with a 10 day Notice to End Tenancy for unpaid rent that was posted to the door of the rental unit on August 14, 2013 and evidence that the tenant acknowledged receipt of the Notice by text message sent to the landlord. The landlord also submitted documentary evidence that the tenants were served with the application for dispute resolution and notice of the direct request proceeding sent to each tenant by registered mail on August 26, 2013.

Upon receipt of this Application for Review Consideration I went to the Canada Post website and checked the tracking numbers for the registered mail sent to the tenants on August 26, 2013. The post office tracking information stated that both registered mailings were successfully delivered to the rental unit and signed for by an occupant on August 28, 2013. The evidence supports the Arbitrator's finding that the tenants were served with the Direct Request Proceeding documents.

The Residential Tenancy Policy Guideline #24 concerning Review applications contains the following passage:

A party who is applying for review on the basis that the arbitrator's decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the arbitrator, and that that evidence was a significant factor in the making of the decision. The party alleging fraud must allege and prove new and material facts, or newly discovered and material facts, which were not known to the applicant at the time of the hearing, and which were not before the arbitrator, and from which the arbitrator conducting the review can reasonably conclude that the new evidence, standing alone and unexplained, would support the allegation that the decision or order was obtained by fraud. The burden of proving this issue is on the person applying for the review. If the arbitrator finds that the applicant has met this burden, then the review will be granted.

There is convincing evidence to show that the tenants were served with notice of this proceeding. The tenant has not provided sufficient evidence to show that false evidence was provided to the arbitrator or that the decision was obtained by fraud.

For the above reasons I dismiss the application for review. The original decision and orders dated September 6, 2013 are confirmed.

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: September 19, 2013

Residential Tenancy Branch