



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC MNR MNSD OPC

Introduction

This review consideration decision is in response to an application for review by the Tenants pursuant to section 79 of the *Residential Tenancy Act (Act)*.

The Tenants requested a review of the decision made by an Arbitrator on October 04, 2013. In that decision, the Arbitrator granted the Landlord an Order of Possession and a monetary Order in the amount of \$700.00. The Arbitrator noted that the Tenant was not represented at the hearing on October 04, 2013.

The Tenants have based the request for review on the basis that a party was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the control of that party, pursuant to section 79(2)(a) of the *Act*.

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 grounds for review pursuant to section 79(2)(a) of the *Act*?

Facts and Analysis

In the Application for Review Consideration the person completing the Application wrote: "Did not get any paperwork regarding the hearing. They were told to deal with me [name provided in the application but will simply be recorded here as T.W.] because

of my mother and brothers condition". On the basis of this declaration, I presume that the application for review is based on the grounds that T.W. was unable to attend the hearing.

No evidence was submitted to show that T.W. has the right to represent either Tenant in a legal matter.

In her decision The Arbitrator concluded that each Tenant had been sufficiently served notice of the teleconference proceeding, after noting that the Landlord provided affirmed testimony, in which the Landlord declared that each Tenant was personally served with the Application for Dispute Resolution and the Notice of Hearing on September 05, 2013.

In the absence of any evidence to show that the Tenants were not personally served with the Application for Dispute Resolution and the Notice of Hearing on September 05, 2013, I find that each Tenant was served with notice of the hearing in accordance with section 89 of the *Act*, and that each Tenant had the opportunity to be present at the hearing.

As there is no evidence to dispute the declaration that T.W. was served with the Application for Dispute Resolution and the Notice of Hearing, I accept that he was not served with these documents. There is nothing in the *Act* that requires a landlord to serve these documents to a person who is not named as a Respondent in the Application for Dispute Resolution. As T.W. was not named as a Respondent, I find that the Landlord was not obligated to serve him with the Application for Dispute Resolution and the Notice of Hearing.

As T.W. was not named as a Respondent and there is no evidence that he was a tenant at this address, I find that he did not have a right to be present at the hearing unless he was called as a witness by one of the parties to the proceedings. In the event the Respondents wanted to be represented at the hearing by T.W., it was up to the Respondent (s) to ensure that T.W. was aware of the time and date of the hearing.

In reaching this conclusion I specifically note that the Respondents were both named on the tenancy agreement; that the tenancy agreement is signed by the Respondent with the initials "S.W."; and there is nothing on the agreement that indicates T.W. is representing these parties or is a party to the agreement.

I find that the Tenant has failed to establish grounds for review pursuant to section 79(2)(a) of the *Act*, and I therefore dismiss the Application for Review Consideration.

Decision

The Arbitrator's decision and Orders, dated October 04, 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: October 21, 2013