



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD

Introduction

This Application for Review Consideration was filed by two named persons, landlord MG, and applicant RK, on December 9, 2013, having received the Decision on December 6, 2013 by “regular post”. As the second person named in the application, RK, is not identified as a landlord in the tenant’s original application for dispute resolution or the Decision or Order dated November 29, 2013, I find applicant RK does not have standing under the *Act* to make an Application for Review Consideration.

Landlord MG has applied for a Review Consideration of the Decision dated November 29, 2013. The Decision and Order established a monetary claim of \$1,250.00 for the tenant and granted the tenant a monetary order of \$950.00.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of a 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.

The landlord has applied on the third ground.

Issue

- Has the landlord provided sufficient evidence to support that the director’s decision was obtained by fraud?

Facts and Analysis

Section 80 of the *Act* states that an applicant **must** submit their application **within 15 days** of the date they receive the Decision or Order when the Decision or Order relates to a monetary order under the *Act*. The landlord filed their Application for Review Consideration on December 9, 2013, having received the Decision on December 6, 2013. As a result, I find that the landlord has submitted their Application within the timeline provided for under section 80 of the *Act*.

The Application contains information under section C3, from the landlord alleging that the director's decision was obtained by fraud.

The landlord writes in their Application:

“False information: [name of tenant] testified she provided the landlord with forwarding address in writing by registered mail.

Correct information: No registered post was received from [name of tenant] and no forwarding address received in writing. Very easy to confirm as registered mail provides a ticketed receipt which may be tracked to confirm delivery/receipt. Also, no notice of a hearing was ever received.”

[Reproduced as written]

The landlord did not attach additional evidence to their Application for Review Consideration, other than a copy of the Decision itself, dated November 29, 2013.

Decision

Based on the above, the evidence and Application submitted, and on a balance of probabilities, I find the following.

In order to be successful on the third ground for Review, the landlord must prove, based on a balance of probabilities, that the director's decision was obtained by fraud. The landlord alleges that they were not served with a registered mail package. I note that in the Decision, service of the hearing document was served by registered mail and the Arbitrator wrote that despite having been served the notice of hearing, “the landlord did not attend the hearing.”

A review of the record supports that a registered mail package was served to the address provided by the landlord in this Application for Review Consideration, which is the same address for the landlord listed in the tenant's original application for dispute resolution. Furthermore, the record supports that the tenant's written forwarding address was also mailed to the landlord's address by registered mail by the tenant. I note that refusal or neglect on the part of the landlord to receive or accept registered mail does not constitute grounds for an Application for a Review Application.

I find that the landlord's Application consist of arguments that the landlord had the opportunity to present during the original hearing, however, failed to attend the hearing. The landlord has not applied under the first ground, namely that they were unable to attend the hearing due to circumstances that were beyond their control and could not be anticipated. The fact that the landlord disagrees with the conclusion reached by the Arbitrator does not amount to fraud.

Therefore, **I dismiss** the landlord's Application due to insufficient evidence. As the landlord's Application for Review Consideration has been dismissed on the third ground, I find the Decision and Order issued on November 29, 2013, **stand and remain in full force and effect**.

I note that the tenant has been granted a monetary order and that the spelling of the name of the tenant may be incorrect in the Decision and Monetary Order. As a result, the tenant may wish to apply for a Correction under section 78 of the *Act*. I note that this Application for Review Consideration does not extend any applicable time limits under section 78 of the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 16, 2013