

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION ON REQUEST FOR CLARIFICATION

The landlord has requested a clarification to the Residential Tenancy Branch decision dated April 22, 2016.

Section 78 of *Residential Tenancy Act* enables the Residential Tenancy Branch to clarify a decision or order.

The applicant requests clarification because:

- Documents not served correctly;
- Testimony missed;
- Errors in evidence handling.

The following information was submitted to support the request:

A type-written document is attached to the Request which seeks a review, and states that the landlord was unaware until after the hearing what the rules were. The document also states that:

- The tenants did not serve the landlord by registered mail as required;
- The tenants did not serve evidence within the time required;
- That during the hearing I advised the parties that evidence from the landlord was marked incorrectly as being received from the tenant.

The document also sets out “Corrections” as follows:

- 1) “No issues with respect to service or delivery of documents or evidence were raised.”
- 2) Issue(s) to be Decided List
- 3) The monetary order amount of \$202.44 for electrical bill charges
- 4) The monetary order amount of \$146.99 for gas bills from Nov. to Mar.
- 5) The RTB fee of \$100.00.

Also attached to the landlord’s Request for Clarification are:

- A copy of the tenants’ Monetary Order Worksheet which was entered into evidence for the hearing on April 14, 2016, with notations added that were not contained in the document that was presented for the hearing;
- A copy of an email dated February 26, 2016 from one of the tenants to the landlord that was entered into evidence for the hearing, with notations added that were not contained in the document that was presented for the hearing;
- A copy of 2 electrical bills with highlighting and notations made thereon, that were also entered into evidence for the hearing without the highlighting and notations.

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

The balance of the almost 4 pages of typewritten material is not conducive to a request for clarification, but a request for a review or an attempt to re-argue the case.

At no time during the hearing did any party take issue or mention an issue with respect to service or delivery of documents or evidence. I find nothing else in the material to be a request for clarification.

The *Residential Tenancy Act* provides that:

Application for review of director's decision or order

79 (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.

(3) An application for review of a decision or order of the director

(a) must be made in the approved form and in the manner approved by the director,

(b) must be accompanied by the fee prescribed in the regulations,

(c) must be accompanied by full particulars of the grounds for review and the evidence on which the applicant intends to rely, and

(d) may be made without notice to any other party.

(4) The director may waive or reduce the fee if satisfied that

(a) the applicant cannot reasonably afford to pay the fee, or

(b) the circumstances do not warrant the fee being collected.

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

(5) The director may refuse to accept an application for review of a decision or order of the director if the application does not comply with subsection (3).

(6) [Repealed 2006-35-97.]

(7) A party to a dispute resolution proceeding may make an application under this section only once in respect of the proceedings.

Time limit to apply for a review

80 A party must make an application for review of a decision or order of the director within whichever of the following periods applies:

(a) within 2 days after a copy of the decision or order is received by the party, if the decision or order relates to

(i) the unreasonable withholding of consent, contrary to section 34 (2) *[assignment and subletting]*, by a landlord to an assignment or subletting,

(ii) a notice to end a tenancy under section 46 *[landlord's notice: non-payment of rent]*, or

(iii) an order of possession under section 54 *[order of possession for the tenant]*, 55 *[order of possession for the landlord]*, 56 *[application for order ending tenancy early]* or 56.1 *[order of possession: tenancy frustrated]*;

(b) within 5 days after a copy of the decision or order is received by the party, if the decision or order relates to

(i) repairs or maintenance under section 32 *[obligations to repair and maintain]*,

(ii) services or facilities under section 27 *[terminating or restricting services or facilities]*, or

(iii) a notice to end a tenancy agreement other than under section 46 *[landlord's notice: non-payment of rent]*;

(c) within 15 days after a copy of the decision or order is received by the party, for a matter not referred to in paragraph (a) or (b).

Decision on application for review

81 (1) At any time after an application for review of a decision or order of the director is made, the director may dismiss or refuse to consider the application for one or more of the following reasons:

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

(a) the issue raised by the application can be dealt with by a correction, clarification or otherwise under section 78 [*correction or clarification of decisions or orders*];

(b) the application

(i) does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely,

(ii) does not disclose sufficient evidence of a ground for the review,

(iii) 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, or

(iv) is frivolous or an abuse of process;

(c) the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

(2) A decision under subsection (1) may be based solely on the written submissions of the applicant.

(3) The director may order that a decision or order in relation to which a review has been requested be suspended, with or without conditions, until the review has been completed and a decision given to the parties.

(4) Within 3 days of receiving a decision to proceed with a review, or within a different period specified by the director, the applicant must give the other party a copy of the decision and of any order giving effect to the decision.

Review of director's decision or order

82 (1) Unless the director dismisses or refuses to consider an application for a review under section 81, the director must review the decision or order.

(2) The director may conduct a review

(a) based solely on the record of the original dispute resolution proceeding and the written submissions of the parties, if any,

(b) by reconvening the original hearing, or

(c) by holding a new hearing.

(3) Following the review, the director may confirm, vary or set aside the original decision or order.



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

I find that the evidence supports the request for clarification that no issues with respect to service or delivery of documents or evidence were raised by either party at the hearing. I find that the evidence does not support the balance of the landlord's request for clarification.

The original decision and order stand.

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: May 31, 2016

Residential Tenancy Branch