



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

- (1) This review consideration decision is in response to an application for review by the Tenant pursuant to section 79 of the *Residential Tenancy Act (Act)*. Specifically, the Tenant is requesting a review of a decision made by a Dispute Resolution Officer, on September 22, 2011, by way of a direct request proceeding. At the conclusion of the proceeding the Dispute Resolution Officer granted the Landlord an Order of Possession and a Monetary Order in the amount of \$500.00.
- (2) The Tenant is requesting a review of the decision on the basis that they have evidence that the decision and/or order was obtained by fraud.
- (3) Section 79 of the *Act* states:
 - (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.** [Emphasis added]
- (4) In support of her application to review on the basis that the Decision and/or Order were obtained by fraud, the Tenant alleges that she was not served with the Notice to End Tenancy for Unpaid Rent (the "Notice") until September 11, 2011. The Landlord's application indicated that she had been served on September 3, 2011. The Tenant provided written statements from five witnesses in support of her claim. In her application for a review consideration, the Tenant submitted that she attempted to pay the Landlord the outstanding rent, but that the Landlord "has made it impossible".
- (5) I do not find the Tenant's declaration that she was served with the Notice on September 11, 2011, is conclusive evidence of fraud on behalf of the Landlord. There is simply not enough information or facts to clearly establish the Landlord was fraudulent.

- (6) However, I do find that the Decision and Orders **may** have been different if the Dispute Resolution Officer had this information been before her while making her determinations.
- (7) Having accepted the request for a review under section 79, I will not consider all the evidence with respect to the grounds submitted for review in this Application. Those are issues to be dealt with at the hearing in this matter, as described below.
- (8) On this basis, I allow the Application for a Review and I hereby Order that a new hearing be conducted by holding a new hearing, pursuant to the provisions of section 82(2)(c). This hearing will be held by telephone conference call at the date and time shown in the attached Notice of Hearing.
- (9) I further Order that the Decision and Orders in this matter, dated September 22, 2011, **be suspended** until such time that a new hearing is conducted and a decision is reached.
- (10) The Tenant must serve the Landlord with a copy of this Review Consideration Decision and the attached Notice of Hearing within **three (3) days** of receiving this Review Consideration Decision.

Dated: October 3, 2011.

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