



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR MNSD OPR

This is an application by the landlord for a review of a decision rendered by an Arbitrator on December 18, 2012.

The *Residential Tenancy Act* provides for a review of a Arbitrator's decision if:

1. A party was unable to attend the original hearing due to circumstances that could not be anticipated and that were beyond his or her 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 arbitrator's decision or order was obtained by fraud.

The Applicant is applying for review on the following ground:

1. A party was unable to attend the original hearing due to circumstances that could not be anticipated and that were beyond his or her control.

The application must clearly set out the grounds for review, and be accompanied by sufficient evidence to support the grounds given. The arbitrator will generally make the initial decision of whether to reopen the matter based solely on the application for review submitted by the applicant and accompanying evidence, without a hearing.

An arbitrator may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the issues raised can be dealt with under the provisions of the Legislation that allow an arbitrator to correct a typographical, arithmetical or other similar error in the decision or order; clarify the decision, order or reasons, or deal with an obvious error or inadvertent omission in the decision, order or reasons;
- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- the application does not disclose sufficient evidence of a ground for review;

- the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the arbitrator should be set aside or varied;
- the application is frivolous or an abuse of process;
- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

Unable to attend

In order to meet this test, the application must establish that the circumstances which led to the inability to attend the hearing were both:

- beyond the control of the applicant, and
- could not be anticipated.

An arbitration hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning,

FINDINGS

The decision under review is a decision to grant the landlord an Order of Possession and monetary Order for unpaid rent based on an undisputed Notice to End Tenancy served on November 2, 2012. The tenant now applies for review stating that she was not served with notice of the hearing however, evidence at the hearing which was accepted by the Arbitrator is that the tenants were served by registered mail and tracking numbers were provided in evidence. Registered mail is an approved method of service whereby the recipients are deemed to have received the registered mail 5 days after mailing. This remains so whether the tenants attend to collect the registered mail or not. Further, the tenant has failed to supply any evidence with this application that the rent has in fact been paid to show that the monetary award for unpaid rent or the Order of Possession should not have been granted.

I therefore find that the Application for Review discloses no basis on which, even if the submission in the application were accepted, the decision or order of the arbitrator should be set aside or varied had the landlord been in attendance at the hearing.

The original decision rendered in this matter is therefore 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: January 09, 2013.

Residential Tenancy Branch

