



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes

OPR, MNR, FF

Basis for Review Consideration

Section 79(2) of the Residential Tenancy Act (Act) states that a party to the dispute may apply for a review of the decision. The application must contain reasons to support one or more of the grounds for review:

- . A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
- . A party has new and relevant evidence that was not available at the time of the original hearing.
- . A party has evidence that the director's decision or order was obtained by fraud.

Applicant's Submission

The application for review consideration states the decision should be reviewed on the ground that the decision was obtained by fraud.

In his application for review, the tenant states that he received the final notice of a registered letter on March 19, 2013, which was after the hearing. The applicant states that the landlord was aware that he had not received the notice of hearing as he had repeatedly told the landlord that he had not received any notice by mail.

The applicant states that despite knowing that the tenant had not received the notice, the landlord fraudulently testified at the hearing that he had served the tenant.

The applicant also states that the landlord refused to disclose details about the hearing and therefore the tenant was unable to attend the hearing and present his defence. The tenant has attached copies of email correspondence between the two parties

Analysis

Based on the evidence in front of me, I find that the notice of hearing was served on the tenant by registered mail on February 20, 2013. The tenant was deemed to have been served the notice of hearing, as indicated in the Arbitrator's decision dated March 14, 2013. As per the tenant's submission, he states that the landlord refused to disclose details about the hearing. This means that the tenant was aware that there was going to be hearing and he could have called the Residential Tenancy Branch Office for details.

The Arbitrator made a decision based on sections 26 and 46 of the *Residential Tenancy Act*. The Arbitrator found that the tenant was served a notice to end tenancy and did not pay rent or dispute the notice within five days of receiving the notice. Therefore the tenant was conclusively presumed to have accepted that the tenancy ended on the effective date of the notice to end tenancy. Even if the tenant had attended the hearing, I find that his testimony of attempts to pay rent and confusion about the amount of rent would not have changed the decision of the Arbitrator.

Section 81(1) (b) (iii) of the Act allows the director to dismiss an application for review if the application 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. Accordingly, I find that the application for review on this ground must fail.

Conclusion

I dismiss the Application for Review Consideration. The original decision and orders made on March 14, 2013 are 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: March 27, 2013

Residential Tenancy Branch