



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: OPR

Introduction

On May 8, 2013 Arbitrator XXXX provided a decision on the landlord's Application for Dispute Resolution seeking to an order of possession. The proceeding had been conducted on May 8, 2013 as an *ex parte* Direct Request Proceeding.

That decision granted the landlord an order of possession. The tenant did not request an extension of time to apply for Review Consideration.

Division 2, Section 79(2) under the *Residential Tenancy Act* says 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:

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 tenant submits in her Application for Review Consideration that she has evidence that the director's decision was obtained by fraud.

Issues

It must first be determined if the tenant has submitted her Application for Review Consideration within the legislated time frames required for reviews.

If the tenant has submitted her Application within the required time frames it must be decided whether she is entitled to have the decision of May 8, 2013 suspended with a new hearing granted because she has provided sufficient evidence to establish that the landlord obtained the decision based on fraud.

Facts and Analysis

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 2 days after a copy of the decision or order is

received by the party, if the decision relates to a landlord's notice to end tenancy for the non-payment of rent.

From the decision of May 8, 2013 the issue before the Arbitrator was related to the landlord's notice to end tenancy for non-payment of rent. As such, I find the decision and order the tenant is requesting a review on allowed 2 days to file her Application for Review Consideration.

From the tenant's submission she received the May 8, 2013 decision on May 9, 2013 and filed her Application for Review Consideration with the Residential Tenancy Branch on May 10, 2013 (1 day after receipt of the decision). I find the tenant has filed her Application for Review Consideration within the required timelines.

While the tenant alleges the landlord committed fraud because she did not receive any registered mail from the landlord I find the failure to receive registered mail does not mean that the registered mail was not sent to the tenant but rather it only means that she did not receive it.

As such, I find the tenant cannot establish fraud, however as the tenant has submitted that she had attempted to pay rent and the landlord refused to accept it, I find there is sufficient ground, in the interests of natural justice to reconvene a participatory hearing for the parties to present evidence and testimony in these matters.

Decision

For the reasons noted above, I find the tenant has established sufficient grounds for a new hearing on these matters. Details of the new hearing are included with the tenant's copy of this decision. The tenant **must serve the landlord within 3 days** of receiving this decision with a copy of this decision and the Notice of Hearing documents.

The decision made on May 8, 2013 is suspended until such time as the new hearing has been completed and a decision is given to the parties, in accordance with Section 81(3).

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 14, 2013