



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC MNR MNSD OPC OPL OPR

Introduction

This is an application by the tenant for a review of the decision of an Arbitrator dated December 20, 2013. The Tenant did not attend the hearing on December 20, 2013 as the Tenant indicated in his review application he did not know the hearing was taking place as he had not received the application and hearing package. The Arbitrator's decision of December 20, 2013 states the Tenant was deemed to have been served by registered mail as the Landlord sent the hearing package to the respondent by registered mail. The Landlord provided a copy of the tracking receipt issued by Canada Post. The Tenant says in the review application the Landlord picked up the Tenant's mail before he got home so he did not receive the registered mail package.

As well the Tenant said the Landlord served the Notice to End the Tenancy to his son who is 16 years old and his son did not give the Notice to end the Tenancy to the Tenant. The Tenant said this is not a correct way to serve a Notice to End Tenancy. Service must be done to an adult older than 18 years of age. As a result the Tenant is requesting a new hearing.

In the original Hearing of December 20, 2013 the Landlord was successful in obtaining an Order of Possession effective 2 days after service to the Tenant and a monetary order for \$725.00.

The Tenant says in the application for review the decision and order were incorrectly served and obtained by fraud.

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.

Issues

The Tenant's application for a review of the previous Arbitrator's decision is on the grounds that the Tenant was unable to attend the original hearing because of circumstances beyond his control and that the decision was obtained by fraud. Is the Tenant's application justified?

Facts and Analysis

The Tenant applied for a review on the basis that he was not served the Application and hearing package for Dispute Resolution by the Landlord. The Tenant says as a result he could not attend the original hearing. The Landlord's evidence shows he served the Tenant with the Application and Hearing package by registered mail in compliance with section 89 of the Act. Arbitrator accepted the service of the Application and Hearing package to the Tenant based on a copy of a Canada Post tracking information slip. The address on the registered mail envelope is the same address as the address the Tenant has given in his application for review. The Tenant was deemed to be served 5 days after the registered mail package was sent. The Tenant says the Landlord pick up his mail before he got home and so he did not receive the registered mail notice, but the Tenant has not provided any corroborative evidence to support this claim. A claim without supporting evidence does not meet the burden of proof required to prove a statement. I find the Tenant was deemed to be served the hearing package by registered mail in accordance to section 89 of the Act; therefore I dismiss the Tenant's review application on the grounds of that the Tenant was not able to attend the hearing because the Tenant was not served the Hearing Package.

Further the Tenant has not submitted any corroborating evidence to support his statements that the Landlord was fraudulent. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. In this situation the Landlord provided a Proof of Service document for the 10 Day Notice to End Tenancy dated October 22, 2013, which indicates it was left with the Tenant in person and that the service of the document was witness and the witness signed the Proof of Service of the Notice to End Tenancy. Tenant has not provided any new evidence or any evidence to corroborate his claim that the Landlord served his son and not himself. Consequently I find the Tenant has not established grounds to show the Landlord was fraudulent and I dismiss the Tenant review application on the grounds that the Landlord obtained the decision by fraud.

Decision

In considering the evidence of the Tenant's review application, I find that the Tenant has not established grounds to be granted a review hearing. Consequently I dismiss the

Tenant's application for a Review Hearing. Arbitrator's decision and order stand in effect as dated in the original hearing of December 20, 2013.

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 08, 2014