

Tenancy Tribunal's officer changed Tribunal hearing date without authority

Legislation	Ombudsmen Act 1975, Residential Tenancies Act 1986
Agency	Ministry of Housing
Ombudsman	Anand Satyanand
Case number(s)	W37621
Date	1997

Tenancy Officer changed a hearing date which amounted to an adjournment—following the Ombudsman's inquiries, the Ministry of Housing (which managed the Tenancy Tribunal) accepted the tenancy officer failed to follow the law when agreeing to change the date of the hearing after the landlord requested the change—the Ministry sent a memorandum to all staff clarifying the role of Tenancy Services where a party asked for a date change—apology sent to the complainant

The complainant, a tenant who had filed an application with the Tenancy Tribunal for an order against his landlord, complained about the change in a date of hearing before the Tribunal. Tenancy Services, part of the Ministry of Housing, sets the dates of hearings. In this case, the complainant had received a notice of hearing from Tenancy Services stating the application would be determined on a certain date. A few days later, he had received a new notice of hearing stating the application would be determined on a different date "at the request of the other party".

The complainant challenged the authority under which Tenancy Services had changed the date. He noted that only the Tribunal could adjourn a hearing. In response, the Ministry advised that, in terms of section 75(3) of the *Residential Tenancies Act*, the Tenancy Officer is responsible for the scheduling of hearing dates before the file is transferred to the Court and that in this case there had been no adjournment, only a change of date. The complainant was dissatisfied with this explanation.

In making his complaint, the complainant asserted that the new notice of hearing was in effect an adjournment which could not be made by a Tenancy Officer. He also raised the concern that he had not been consulted in regard to the change in the date of the hearing.

The Ministry advised that, after reviewing the relevant law, it accepted that its earlier advice to the complainant had been incorrect. It accepted that a change of hearing date after notices had been served was an adjournment. The Ministry acknowledged that Rule 9 of the *Residential Tenancies Rules 1987*, which provides that a Registrar may adjourn the date of a hearing in certain circumstances, including when parties consent, had been overlooked. Accordingly, it was agreed that the hearing date should not have been changed by the Tenancy Officer, and should only have been changed by the Registrar if either both parties consented or if a Tenancy Adjudicator had made a direction.

As a result, a memorandum was sent to all Ministry staff to clarify the role of Tenancy Services when one party asks for a hearing date to be changed. An apology was also sent to the complainant.

The Ministry's acceptance that a mistake had occurred, together with the steps taken to clarify Tenancy Services' role and to apologise to the complainant effectively resolved the complaint.

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