

REVIEW DECISION

Introduction

This review consideration decision is in response to an application for review by the Landlords pursuant to section 79 of the Act. Specifically, the Landlords are requesting a review of the original decision of December 12 2008 on the basis that:

- a) *A party was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the party's control; and*
- b) *A party has new and relevant evidence that was not available at the time of the original hearing.*

Issue(s) to be Decided

I will consider the two reasons the Landlords have submitted this review request upon and determine if a review hearing is to be allowed.

Background and Evidence

The Landlords have submitted a request for review of an arbitrators decision made during a dispute resolution hearing requested by the Tenant held on December 12, 2008. The decision rendered on December 12 2008 found that the tenancy commenced in July 2007 and ceased at the end of September 2008. The December 12 2008 decision determined that the Tenant was entitled to costs for paint reimbursement, key replacement costs, filing fee costs, return of the deposit and interest.

The Landlords submit that:

A party was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the party's control

Further to the argument above the Landlords have provided airline ticket evidence that at the time of the hearing they were out of the country, departing on November 6, returning to Canada on December 15 2008. The Landlords submit that during this time they had very limited contact with their home in Canada and were not aware of the hearing. However, a determination was made during the hearing on December 12 2008 that service of notice of this hearing was properly completed. The Landlord submits that the Tenant was aware they were out of the country; however, the Landlord has not provided proof that the Tenant was in fact aware of this absence. The tenancy ceased more than one month prior to the Landlords departure, therefore, it is reasonable to expect the Landlord to have dealt with any outstanding matters related to this end of tenancy prior to leaving the country for almost 6 weeks. The Landlord application for review states that there were issues to be sorted out before they were willing to issue a cheque to the Tenant. The decision rendered on December 12 2008 responds to the delay in process that contravened the Residential Tenancy Act by ordering payment to the Tenant.

The Landlords further submit that:

A party has new and relevant evidence that was not available at the time of the original hearing.

The Landlords application for review of the arbitrator's decision states that the Landlord was awaiting evidence from a carpet cleaning company. The Landlord application also states that they did not have time to return the deposit.

Analysis

I find that the Landlords have not met the criteria to grant a review on the basis of being unable to attend due to circumstances that were not anticipated or were beyond the party's control. As described by the Landlord in the space provided on the application, the outstanding matters between the Landlord and Tenant were not concluded prior to the Landlords leaving the country.

There are no grounds showing that there was anything out of the party's control in this matter. The Landlords chose to leave Canada prior to properly concluding the outstanding matters related to the tenancy and, knowing that there were outstanding issues, failed to notify the Tenant of their assigned agent who could act on the Landlords behalf while they were unavailable. Therefore, I deny the request for a review under this category.

In relation to the Landlords grounds for review that they possess new and relevant evidence that was not available at the time of the hearing, I do not accept that this evidence related to a tenancy which ceased at the end of September 2008 was not in existence or available at the time of the hearing.

On this basis, I deny the Landlords application for a review as they have not shown that they have new and relevant evidence that was not available at the time of the original hearing.

Conclusion

It is my determination in review of this application that the Landlords request for review should be rejected and I dismiss this application.

Furthermore, I would also reject the Landlords request for review on the basis that even if I did accept their submission, they would disclose no basis on which I would vary or set aside the original decision and Order of December 12 2008. I based this conclusion on the irrelevancy of the Landlord arguments that do not address their failure to comply with the *Act* as fully detailed in the original decision.

[7] The original decision and Order of December 12 2008 stand and remain enforceable.

Dated January 09, 2009.

