

Decision

Dispute Codes: MNSD, FF

Introduction / Background / Analysis

A hearing was originally convened on January 11, 2011, in response to the landlord's application. While the landlord was represented at the hearing, the tenant did not attend. By way of decision of the same date, the landlord was ordered to retain a portion of the tenant's security deposit, and to return the balance to the tenant.

Thereafter, a member of the tenant's family applied for review on grounds that the tenant was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the tenant's control, as well as on grounds that the decision or order were obtained by fraud.

The dispute resolution officer who considered the application granted the review, and by decision dated February 16, 2011, he ordered that the decision and order dated January 11, 2011 be suspended pending the outcome of a review hearing. In the decision of February 16, 2011, the dispute resolution officer also stated in part, as follows:

The Residential Tenancy Branch will schedule a Review Hearing and provide the parties with confirmation notice of the date and time of the Review Hearing. Failure to attend the hearing at the scheduled time, with all relevant documents and/or witnesses, will result in a decision being made on the basis of any information before the dispute resolution officer and the evidence of the party in attendance at the hearing.

While the review hearing was scheduled to commence at 1:30 p.m. on March 11, 2011, the only person present was an agent representing the landlord who filed the original application for dispute resolution.

The landlord's agent testified at the review hearing, that the decision and order dated January 11, 2011 reflect an accurate understanding of the circumstances surrounding the landlord's original application for dispute resolution. Further, the landlord's agent testified that the landlord had not been served with any documentary evidence by the party representing the tenant, either before or after the original hearing held on January 11, 2011.

Section 82 of the Act speaks to **Review of director's decision or order**, and provides in part as follows:

82(2) The director may conduct a review

(a) based solely on the record of the original dispute resolution proceeding and the written submissions of the parties, if any,

(b) by reconvening the original hearing.

(3) Following the review, the director may confirm, vary or set aside the original order.

Conclusion

On the basis of the record of the original dispute resolution proceeding, and on the basis of the affirmed / undisputed testimony of the landlord's agent at the review hearing, I hereby order that the original decision and order dated January 11, 2011 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*.

DATE: March 11, 2011

Residential Tenancy Branch