



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD

Introduction

This is an application by the landlord for a review of a decision rendered by XXXX, Dispute Resolution Officer (DRO) on February 10, 2011, with respect to an application for dispute resolution from the tenant.

A DRO may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the application does not disclose sufficient evidence of a ground for review;
- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the arbitrator should be set aside or varied;
- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

Issues

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 landlord's application to review this decision was based on all three of the grounds outlined above. Although he did not need to do so, the landlord also applied for an extension of time to make his application. No such extension was necessary as the Residential Tenancy Branch (the RTB) received his application within 15 days of March 19, 2011, the date that he maintained he received DRO XXXX's decision.

Facts – Unable to Attend and Fraud

Although the landlord applied under all three of the grounds for review, his claim regarding why he was unable to attend the original hearing (Ground #1) and his claim of fraud (Ground #3) rely on the same contention. He explained that he did not receive a notice of the dispute resolution hearing or the tenant's application for dispute resolution.

In the Application for Review Form, the landlord was asked to explain why this situation was beyond his control and could not have been anticipated. The landlord stated that he had a signed receipt from the tenant regarding return of \$190.00 of the tenant's security deposit. He also maintained that he had a verbal agreement with the tenant regarding the tenant's responsibility for cleaning the carpet when he vacated the rental unit. He stated that he would have presented evidence that the tenant acknowledged the landlord's deduction of \$270.00 when he signed the receipt. The landlord claimed that there was "absolutely no statement that I was properly served with notice of the application or hearing."

Analysis – Unable to Attend and Fraud

In order to meet the test of being unable to attend a hearing, the application must establish that the circumstances which led to the inability to attend the hearing were both:

- beyond the control of the applicant, and
- could not be anticipated.

A dispute resolution hearing is a formal, legal process and parties should take steps to ensure that they will be in attendance at the hearing. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.

DRO XXXX's decision stated that the tenant attended the hearing, but the landlord did not. She noted that "The tenant presented evidence that the landlord was served with the application for dispute resolution and notice of hearing by registered mail." DRO XXXX found that the landlord had been properly served with the notice of the tenant's claim and the date and time of the hearing. On this basis, she proceeded with the hearing without the landlord's participation.

Section 89 of the *Act* allows for service of an application for dispute resolution by registered mail. Section 90(a) of the *Act* establishes that a notice sent by registered mail in accordance with section 89 is deemed served on the 5th day after it is mailed. Based on the written and oral evidence received by DRO XXXX, she decided that the tenant's dispute resolution hearing package had been served in accordance with the

above provisions of the Act. The tenant provided Canada Post records, including a tracking number, which satisfied the DRO regarding her decision regarding the service of these documents to the landlord. A respondent cannot avoid service by registered mail by refusing to accept a dispute resolution hearing package from an applicant. The landlord has not presented any evidence with respect to this matter that this was not the case, other than his claim that he never received notice of the hearing. I am satisfied that the DRO had reasonable grounds to accept the tenant's deemed service of the dispute resolution hearing package by registered mail.

I dismiss the landlord's applications for review on the basis of being unable to attend the hearing for reasons beyond his control as he has provided insufficient evidence of a ground for review. For similar reasons, I dismiss the landlord's application that the tenant provided fraudulent information regarding the notice he provided to the landlord for this hearing.

Facts – New and Relevant Evidence

Leave may be granted on this basis if the applicant can prove that:

- he or she has evidence that was not available at the time of the original arbitration hearing;
- the evidence is new;
- the evidence is relevant to the matter which is before the Dispute Resolution Officer;
- the evidence is credible, and
- the evidence would have had a material effect on the decision of the Dispute Resolution Officer

Only when the applicant has evidence which meets all five criteria will a review be granted on this ground.

The landlord stated that a letter from his realtor, another from the new tenant in this rental unit, and photos were new and relevant evidence that demonstrated the condition of the rental unit when the tenant vacated the premises.

Analysis – New and Relevant Evidence

In considering this request, I note that the landlord has not denied the tenant's claim, referenced in the DRO's decision, that no move-in or move-out condition inspection was conducted by the landlord. The landlord did not maintain that he applied for dispute resolution to retain a portion of the tenant's security deposit within 15 days of receiving the tenant's written forwarding address for damage caused during this tenancy. The landlord did not claim that he returned all of the tenant's security deposit to the tenant

within 15 days of receiving the tenant's forwarding address. The landlord provided insufficient information to demonstrate a written agreement from the tenant to allow him to retain a portion of the tenant's security deposit.

I find that the evidence presented as new and relevant by the landlord has little bearing on the landlord's failure to take any of the above measures and, in this way, affect the DRO's decision regarding the return of the tenant's security deposit. I find that the evidence the landlord presented as new and relevant is not relevant to the matters before the DRO and would have had little effect on the DRO's decision. As such, I dismiss the landlord's application for review because it discloses insufficient evidence of this ground for review.

Overall, the landlord's application does not disclose any basis upon which, even if the submissions in the application were accepted, the decision or order of the DRO should be set aside or varied. The original decision is therefore confirmed.

Decision

The decision made on February 10, 2011 stands. 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*.