



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNSD

Introduction

On December 14, 2011 Dispute Resolution Officer (DRO) XXXXXX provided a decision on the tenant's Application for Dispute Resolution seeking a monetary order for return of the security and pet damage deposits.

That decision granted that the landlord must return double the amounts of the security deposit and pet damage deposit to the tenant as a result, at least in part, of the landlord's absence and therefore undisputed testimony provided by the tenant.

Division 2, Section 79(2) under the *Residential Tenancy Act (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 landlords submit in their Application for Review that that they were unavailable at the time due to circumstances beyond their control.

Issues

The issues to be decided are whether the landlords are entitled to have the decision of December 14, 2011 suspended and a new hearing granted because they have provided sufficient evidence that they were unable to attend the hearing due to circumstances beyond their control.

Facts and Analysis

The landlords submit that they did not receive any notification of that the hearing was being conducted at all. DRO XXXXX writes in his decision: "Despite being served by way of registered mail with the application for dispute resolution and notice of hearing

(the hearing package), the landlord did not appear. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mail.”

As the decision only indicates that the tenant provided a tracking number, without evidence of where the hearing package was sent to or that it was indeed received, unclaimed or rejected by the landlord, I find there is sufficient question as to whether the landlord was served with the hearing package in accordance with the *Act*.

For these reasons, I find the landlords were unable to attend the hearing because they were not served with notice of the hearing by the tenant and therefore for reasons beyond their control.

Decision

For the reasons noted above, I find the landlords have established sufficient grounds for a new hearing on these matters. Details of the new hearing are included in the attached documents. The landlord must serve the tenant within 3 days of receiving this decision with a copy of this decision and the Notice of Hearing documents.

The decision made on December 14, 2011 is suspended until such time as the new hearing has been completed and a decision is given to the parties, in accordance with Section 81(3).

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 19, 2012.

Residential Tenancy Branch