



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNSD

Introduction

On January 12, 2012 A Dispute Resolution Officer (DRO) provided a decision on the tenant's Application for Dispute Resolution seeking a monetary order for return of double the amount of the security deposit. The hearing had been conducted on January 12, 2012.

That decision granted the tenant a monetary award of \$1,250.00. The landlord submits he received a copy of the decision on April 13, 2012, by attending the local Residential Tenancy Branch office. The landlord submits that he was not living at the address where the tenant served him with any information of the hearing or the outcome of the hearing. The landlord requested an extension of time to apply for Review Consideration.

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 submits in his Application for Review Consideration that he was unable to attend the hearing due to circumstances beyond his control; that he has new and relevant evidence that was not available at the time of the original hearing; and that the decision was obtained by fraud.

Issues

It must first be determined if the landlord has submitted his Application for Review Consideration within the legislated time frames required for reviews.

If the landlord has submitted his Application within the required time frames it must be decided whether the landlord is entitled to have the decision and order of January 12, 2012 suspended with a new hearing granted because he has provided sufficient evidence to establish that he was unable to attend the hearing due to unanticipated

circumstances that were beyond his control; that he has new and relevant evidence that was not available at the time of the original hearing; or that the decision and order were obtained by fraud.

Facts and Analysis

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 15 days after a copy of the decision or order is received by the party, if the decision relates to a financial claim regarding a security deposit.

From the landlord's submission I accept the landlord received the decision on April 13, 2012 and that he filed his Application for Review Consideration on April 13, 2012. As such, I find the landlord has filed his Application within the required legislated deadlines.

The landlord submits that as a result of a marital breakdown he had moved away from his previous address after the tenancy ended and because the tenant had used the address for his marital home for service he was neither informed about the hearing or the decision and order.

The landlord did submit a copy of the tenancy agreement that lists both the himself and his ex-wife as landlords however, I note the tenant filed her Application for Dispute Resolution only against the male landlord and as such I accept that the address used for service by the tenant was not the landlord's address and he was therefore never informed of the hearing.

As a result, I find the landlord was not able to attend the hearing due to circumstances that he was not able to anticipate in that he was not made aware of the proceeding and therefore the circumstances were also beyond his control.

I also accept that as result of improper service to the landlord and based on additional evidence submitted by the landlord that the outcome of the original may have been different had the landlord attended the hearing, specifically whether the tenant attended a move out condition inspection or extinguished her right to the return of the security deposit by failing to attend the inspection.

Decision

For the reasons noted above, I find the landlord has established sufficient grounds for a new hearing on these matters. Details of the new hearing are included with the landlord's copy of this decision. The landlord **must serve the tenant within 3 days** of receiving this decision with a copy of this decision; the Notice of Hearing documents; and any evidence he intends to rely upon at the hearing.

As I have found the landlord has established that he was unable to attend the hearing for reasons beyond his control, I make no findings on the other two grounds (new and relevant evidence or fraud) that he has identified as grounds for a new hearing.

The decision made on January 12, 2012 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: April 20, 2012.

Residential Tenancy Branch