



# 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 Landlords for a review of a decision rendered by a Dispute Resolution Officer (DRO) on April 3, 2012 with respect to an application for dispute resolution filed by the Tenants for the return of a security deposit. The Landlords did not attend the hearing and the Tenants were granted an order for the balance of the unreturned portion of their security deposit plus compensation equal to the amount of the deposit due to the Landlords' failure to return it as required by s. 38(1) of the Act.

### 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 Landlords applied for a review on the first ground.

### Facts and Analysis

In the written submissions to their application, the Landlords claim that they did not attend the hearing because they did not have notice of it. In particular, the Landlords claim that they were away on vacation, that they had to attend to a medical issue with one of their children and that they had problems with a vehicle and therefore did not get the Tenants' package which was sent by registered mail on March 19, 2012 until April 4, 2012. The Landlords also claim that this package did not include a copy of the Tenants' Application for Dispute Resolution and Notice of hearing but only some documentary evidence. The Landlords further claim that they were unaware of the hearing held on April 3, 2012 until they received a copy of the (corrected or amended) Decision in the mail on April 29, 2012.

RTB Policy Guideline #24 says at p. 1 that,

*“In order to meet the test (of being unable to attend), the application and supporting evidence 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.”*

The Landlords provided a copy of what they claim they received from the Tenants via registered mail and it did not include a copy of the Application for Dispute Resolution or the Notice of Hearing. The Landlords provided no evidence of when they had been on vacation, or of their daughter's medical emergency or of any vehicle repair problems.

The Landlords argued that if they had attended the hearing they would have provided e-mail correspondence with the Tenants and a copy of the condition inspection report that show cleaning and repairs were required at the end of the tenancy. I find that this evidence is unhelpful given that the Landlords did not dispute the finding of the DRO in the Decision dated April 3, 2012 that they did not have the Tenants' written authorization nor did they make an application for dispute resolution to keep part of the security deposit as payment for the cleaning and repairs.

Based on the foregoing, I find that it is unlikely that there would be a different result if this matter was remitted back for a review hearing however it is a principle of administrative fairness and natural justice that a Party must be given a reasonable opportunity to respond to a claim. Although the Landlords provided no corroborating evidence that the package they received from the Tenants by registered mail on April 4, 2012 did not contain the Application and Notice of Hearing, I find that as a matter of natural justice, the Tenants' application should be reconvened.

***Because this is a Review hearing, the Landlords may not file a counterclaim to be heard with the Tenants' application, but may file an application to be heard at another time.***

### Decision

I ORDER pursuant to s. 82(3) of the Act that the Decision and Order made April 4, 2012 (and amended April 23, 2012) are hereby suspended pending the outcome of the Review Hearing.

The Reconvened Hearing is scheduled for **May 30, 2012 at 9:00 a.m.** Copies of the Notices of the Reconvened Hearing setting out the new date, time and dial in codes for the hearing via teleconference call are enclosed only with the Landlords' copy of this Decision. ***A copy of the Reconvened Hearing Notice must be served on the Tenants within 3 days of the Landlords receiving it and no later than 5 days prior to the date set for the hearing.***

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: May 09, 2012.

---

Residential Tenancy Branch