



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD

Introduction

On September 6, 2012 Dispute Resolution Officer (DRO) XXXXXX provided a decision on the tenant's Application for Dispute Resolution seeking return of double the security and pet damage deposits. The hearing had been conducted on September 5, 2012.

That decision granted the tenants a monetary order in the amount of \$2,820.00. The landlords did not request an extension of time to apply for Review Consideration.

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 Consideration that they were unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control; that they have new and relevant evidence that was not available at the time of the original hearing; and they have evidence that the director's decision was obtained by fraud.

Issues

It must first be determined if the landlords have submitted their Application for Review Consideration within the legislated time frames required for reviews.

If the landlords have submitted their Application within the required time frames it must be decided whether the landlords are entitled to have the decision of September 7, 2012 suspended with a new hearing granted because they have provided sufficient evidence to establish that they were unable to attend the hearing for unexpected reasons that were beyond their control; they have new and relevant evidence that was not available at the time of the original hearing; or they have evidence the tenant obtained the decision based on 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 does not relate to a matter of possession of the rental unit; a notice to end tenancy; withholding consent to sublet; repairs or maintenance or services and facilities.

From the decision of September 6, 2012 the issues before the DRO were related to the tenant's claim for return of double the amount of the security deposit. As such, I find the decision and order the landlords are currently requesting a review on are not related to a matter of possession of the rental unit; a notice to end tenancy; withholding consent to sublet; repairs or maintenance or services and facilities and as such the landlords were allowed 15 days to file their Application for Review Consideration.

From the landlords' submission they indicate that they received the September 6, 2012 decision on September 11, 2012 and filed their Application for Review Consideration with the Residential Tenancy Branch on September 14, 2012 (3 days after receipt of the decision). I find the landlords have filed their Application for Review Consideration within the required timelines.

The landlords submit, in their Application for Review Consideration, that they were unable to attend the hearing because they did not receive notice of the reconvened hearing from the Residential Tenancy Branch (RTB). They submit that they did check with the RTB, who indicated that it was mailed, however the landlords submit they did not receive it and so were not aware of the hearing date; time or call in procedures.

The landlords submit that they would have provided evidence of the damage left; unclean carpets; pet damage; tenant's refusal to allow landlord to show the premises to prospective tenants; overholding; landlords' attempts to communicate with the tenant; landlords' letter of disposition of deposit letter mailed to the tenants; documentation of landlords' monetary losses.

I accept the non-receipt of the notice of hearing documents is sufficient to establish the landlords were unable to attend the hearing for reasons that were unanticipated and beyond their control.

However, as this hearing was based on the tenant's Application to determine if the landlords had followed their obligations under the *Act* to return of the security and pet damage deposits or file an Application for Dispute Resolution to claim against the deposits within 15 days of the end of the tenancy and receipt of the tenant's forwarding address and the landlords do not indicate that they have any evidence to contradict the findings in the decision about these matters, the provision of evidence of the condition of the rental unit; damages or losses suffered by the landlord are not relevant to the outcome.

As such, in relation to the landlords' ground that they were unable to attend the hearing, I find, pursuant to Section 81(1)(b)(iii) the landlords' Application for Review Consideration discloses no basis on which, even if the submissions in the application were accepted, the decision should be set aside or varied.

In relation to the landlords' claim that they have new and relevant evidence that was not available at the time of the hearing, I note the landlords had not provided any evidence to the hearing file and they have not provided any evidence in their Application for Review Consideration. In addition the landlords do not provide any information in their Application as to what information is new; why it was not available at the time of the hearing; or how it is relevant to the decision of September 6, 2012.

The landlords also submit that the decision was obtained by fraud. As evidence of that fraud the landlords submit the tenant

“appears to have made material misrepresentations to the Resolution Officer. One example is the ex-Tenant's statement, or the Resolution Officer's understanding of the existence of a Mutual Agreement to extend the tenancy.”

While I accept that the DRO may have misunderstood or the tenant may have misrepresented a mutually agreed upon end date to the tenancy, I find that whether or not there was agreement or not is again not relevant to the issues before the DRO and these facts were not material to her decision.

The material facts of this case were the end date of the tenancy; the date the landlord received the tenant's forwarding address in writing; and whether or not the landlord's returned the deposits in full to the tenant or they filed an Application for Dispute Resolution seeking to claim damages or losses from both deposits within 15 days of the latter of the above noted dates.

As the landlords have submitted no comments on these particulars facts or findings of the DRO as outlined in her decision, I find the landlords have failed to establish that the decision was obtained by fraud.

Decision

For the reasons noted above, I dismiss the landlord's Application for Review Consideration. I re-iterate the comment in the decision of September 6, 2012 where DRO XXXXXXXX writes:

“This order does not prevent the landlords from filing a separate application for dispute resolution against the tenant for a monetary order for any damages or cleaning costs that may be proven at that hearing.”

The decision made on September 6, 2012 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*.

Dated: September 18, 2012.

XXXXX, Dispute Resolution Officer
Residential Tenancy Branch