



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNSD

Introduction

On March 28, 2012 Dispute Resolution Officer (DRO) XXXXXX provided a decision on the tenant's Application for Dispute Resolution seeking a monetary order. The hearing had been conducted on March 12, 2012.

That decision granted the tenant a monetary order for double the amount of the security deposit. The landlord did not request 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 original hearing because of circumstances that could not be anticipated and were beyond his control and that he has new and relevant evidence that was not available at the time of the original hearing.

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 order of March 28, 2012 suspended with a new hearing granted because he has provided sufficient evidence to establish that he was unable to attend the hearing for unexpected reasons that were beyond his control and he has new and relevant evidence that was not available at the time of the original hearing.

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 March 28, 2012 the issues before the DRO were related to the return of the security deposit held by the landlord to the tenant. As such, I find the decision and order the landlord is currently requesting a review on do not relate to the matters identified above and as such the landlord was allowed 15 days to file his Application for Review Consideration.

The landlord has failed to indicate when he received the March 28, 2012 decision but filed his Application for Review Consideration with the Residential Tenancy Branch on October 10, 2012 (nearly 200 days after the decision and order was written).

As the landlord has failed to advise when he received the decision, I can only assume that he received it after it was mailed by the DRO. As the decision was issued on March 28, 2012 I find it likely the decision was mailed to the landlord the same date or March 29, 2012.

Using Section 90 of the *Act* as a guide I would find it likely the landlord would have received the decision from the DRO no later than 5 days after it was mailed. As such, I find the landlord received a copy of the decision at least by April 4, 2012.

The landlord has also submitted, with his Application for Review Consideration, a copy of a letter from the tenant demanding the landlord pay the tenant \$400.00 "in regards to the dispute resolution services that entitled me...." So even if the landlord had not received the decision by April 4, 2012 he was made aware of the outcome at least by April 13, 2012.

I find the landlord has failed to file his Application for Review Consideration within the required timelines.

Although the landlord has not requested an extension to the deadline to submit his Application for Review Consideration, I note that the landlord has submitted medical documentation that he has had to travel from his home community to a more urban location for cancer treatment periodically since April 16, 2012 and a copy of an airline ticket in his name for a flight on March 20, 2012.

While the landlord has provided this medical documentation, I find that it does not provide any justification for the landlord's failure to attend or have an agent attend the hearing conducted on March 12, 2012 or to justify failing to apply for review within the required timeframes.

Decision

For the above noted reasons, I dismiss the landlord's Application for Review Consideration.

The decision made on March 28, 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: October 16, 2012.

Residential Tenancy Branch