



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD

Introduction

On September 24, 2012 Dispute Resolution Officer (DRO) XXXXXX provided a decision on the tenant's Application for Dispute Resolution seeking to a monetary order. The hearing had been conducted on September 19, 2012.

That decision granted the tenant a monetary order in the amount of \$1,750.00. The landlord 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 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; that he has new and relevant evidence that was not available at the time of the original hearing; and he has evidence that the director's 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 of September 24, 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; he has new and relevant evidence that was not available at the time of the original hearing; or he has 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 24, 2012 the issues before the DRO were related to the tenant's claim for damages and return of the security deposit. 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.

From the landlord's submission he indicates that he received the September 24, 2012 decision on October 1, 2012 and filed his Application for Review Consideration with the Residential Tenancy Branch on October 12, 2012 (11 days after receipt of the decision and order). I find the landlord has filed his Application for Review Consideration within the required timelines.

The landlord submits that he was not able to attend the hearing because he had not received a notice to attend the hearing. The landlord submits that he had attempted to provide the tenant with the security deposit at the forwarding address provided by the tenant but that it was returned unopened.

The presumption of receipt of documents that are served in accordance with the *Act* is a rebuttable presumption and as the landlord submits that he had not received notice of the original hearing, I find it necessary in accordance with the principles of natural and administrative justice to grant a new hearing on these matters.

As I have determined the landlord has established sufficient ground for a new hearing based on his inability to attend for reasons beyond his control, I make no findings on the landlord's submission of other grounds for Review Consideration.

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 and the Notice of Hearing documents.

The decision made on September 24, 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: October 17, 2012.

Residential Tenancy Branch