



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

Introduction

On April 2, 2013 Arbitrator XXXXX provided a decision on the tenants' Application for Dispute Resolution seeking return of double the security deposit. The hearing had been conducted on April 2, 2013.

That decision dismissed the tenants' Application without leave to reapply. The tenants 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 tenants 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 her control.

Issues

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

If the tenants have submitted their Application within the required time frames it must be decided whether they are entitled to have the decision of April 2, 2013 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 her control.

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 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 April 2, 2013 the issues before the Arbitrator were related to return of the security deposit. As such, I find the decision the tenants are requesting a review on do not relate to the matters identified above and as such the tenants were allowed 15 days to file their Application for Review Consideration.

From the tenants' submission they received the April 2, 2013 decision on April 9, 2013 and filed their Application for Review Consideration with the Residential Tenancy Branch on April 12, 2013 (3 days after receipt of the decision). I find the tenants have filed their Application for Review Consideration within the required timelines.

The tenants submit that they were unable to attend the hearing because on March 28, 2013 the tenants requested a copy of the Notice of Hearing document from the Residential Tenancy Branch (RTB) but instead of receiving a copy of the document for the April 2, 2013 hearing she was given a copy of the document relevant to a hearing on December 12, 2012.

The tenants submit that as result they attempted to call in to the hearing using incorrect access codes; that she subsequently contacted the RTB and spoke with an Information Officer who provided her with the correct access codes. She attempted to call in with the correct codes and remained on the line for nearly 35 minutes.

Conference call records confirm the applicants were in the conference call from 10:47 until 11:20 and that the Arbitrator and two representatives for the landlord were in the conference call between 10:29 and 10:43.

Based on the submissions of the tenants and the conference call records I am satisfied the tenants were unable to attend the call for unanticipated reasons that were beyond the tenants' control.

Decision

For the reasons noted above, I find the tenants have established sufficient grounds for a new hearing on these matters. Details of the new hearing are included with the tenants' copy of this decision. The tenants **must serve the landlords within 3 days** of receiving this decision with a copy of this decision and the Notice of Hearing documents.

The decision made on April 2, 2013 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 17, 2013