



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes MNSD, MNDC, FF

Basis for Review Consideration

Section 79(2) of the Residential Tenancy Act (Act) states that 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.

Applicant's Submission

The application for review consideration states the decision should be reviewed on the ground(s) of

The Applicant was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control.

The Applicant has evidence that the director's decision or order was obtained by fraud.

The Applicant Landlord writes that the Landlords were out of town and did not receive notification of the hearing. In support of this the Landlords have included travel documents indicating they were out of the country during the relevant time periods.

The Landlords write that had they attended the hearing they would have provided

evidence to prove that the Applicant in the original application for dispute resolution (R.F.) was not the Tenant listed on the tenancy agreement (D.D.). The Landlords also write they would have provided evidence that the actual Tenant on the tenancy agreement (D.D.) forfeited his deposit to the Landlords.

Analysis

Based on the above, the evidence submitted, the Application for Review Consideration and on a balance of probabilities, I find that the Landlords have proven they did not attend the hearing because of circumstances that could not be anticipated and were beyond their control. **Therefore, I allow the review and order that a new hearing be conducted.**

I find the Landlords were not in the country at the time of the hearing and could not have been notified of the hearing as a result. At the time they were out of the country the tenancy had been ended for several months, and therefore, the Landlords had no duty to inform the Tenant they were away, or to provide an alternate Agent to represent the Landlords to the Tenants. I further note that the deemed served provisions of the Act are subject to a rebuttable presumption. In this case I find the Landlords have successfully rebutted the presumption of service.

Having found the Landlords have been successful in this portion of the Application for Review Consideration, it is not necessary to examine the merits of the allegation the decision or order were obtained by fraud, as this may be an issue to deal with in the new hearing I have ordered.

Conclusion

I order that a new hearing take place and **I order that the decision and order made on March 19, 2013 are suspended** pending completion of the new hearing.

Failure to attend the hearing at the scheduled time and to meet deadlines for the submission and service of evidence will result in a decision being made on the basis of information before the Arbitrator and the testimony of the party in attendance at the hearing.

Notices of the time and date of the hearing are included with this Review Consideration Decision for the Landlord to serve to the Tenant within 3 days of receipt of this Decision. The Landlord must also serve a copy of this Review Consideration Decision to the Tenant.

The Tenant must also serve the Landlords with a copy of the Application for Dispute Resolution and all evidence they submitted for the original hearing.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at <http://www.rto.gov.bc.ca/content/publications/factSheets.aspx> that explain evidence and service requirements. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020

Victoria: 250-387-1602

Elsewhere in BC: 1-800-665-8779

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 05, 2013

Residential Tenancy Branch

