



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD

### Introduction

The original dispute resolution hearing on the tenants' application was held on April 30, 2013, and a decision was issued the same day, granting the tenants' application for a monetary order.

This is a request by the landlords for a review of that original decision.

The landlords applied for a review on the grounds that they were unable to attend the hearing due to circumstances that could not be anticipated and were beyond their control and that they have evidence that the decision was obtained by fraud, pursuant to Section 79(2) under the *Residential Tenancy Act*

### Issues

Have the applicants for review provided sufficient evidence to support one of the indicated grounds for review?

### Facts and Analysis

#### *Unable to attend the hearing-*

In their application for review, the applicants/landlords submitted that they were unable to attend the original hearing because they were not made aware that there was a dispute resolution hearing and that they did not receive or sign any notification from the tenant for the dispute resolution hearing.

It is my finding that the applicants/landlords have not shown that they were unable to attend the original hearing due to circumstances that could not be anticipated or were beyond their control.

The applicants have stated they were not made aware of the dispute resolution hearing. However, a review of the tenants' evidence for the original hearing showed the tenants

sent the hearing documents via Canada Post registered mail to the address used by the landlords in their application for review and on the tenancy agreement also entered into evidence by both parties.

The tenants' evidence also showed that the registered mail envelope containing the hearing documents was returned to the tenants, marked "unclaimed" by Canada Post. The landlords did not assert that Canada Post did not leave notifications of a registered mail package, just that they were not made aware of the hearing.

Under section 90 of the Act, documents served upon the other party are deemed served 5 days later when sent via registered mail. Although the service of documents and whether they were in fact served is a rebuttable presumption, I do not find the landlords provided sufficient evidence to overcome this presumption.

Rather I concluded that the landlords' deliberate act of not claiming their mail caused them to not receive the notice of the hearing.

Due to the above, I am therefore satisfied that the landlords were served the Hearing Package in a manner complying with section 89 of the Residential Tenancy Act whether they chose to collect their mail or not.

Therefore I am not willing to grant a new hearing under the ground of the landlords were unable to attend the hearing due to circumstances that could not be anticipated and were beyond their control.

*Evidence that the director's Decision was obtained by fraud-*

In their application for review, the landlords submitted that the tenants incorrectly stated the date of their notice to end the tenancy, that the tenants claimed for labour costs even though there was an addendum to the tenancy agreement that the tenant provide yard maintenance, and fraudulently stated that the tenants served the landlords the notice of the dispute resolution by registered mail.

In order to prove that the decision was obtained by fraud the landlords must show that false information was submitted, that the person submitting the evidence knew that it was false and *that the false evidence was used to obtain the desired outcome.*

It is my finding that the landlords have submitted insufficient evidence to support their argument under this ground.

The Decision of April 30, 2013, dealt with the tenants' request for a return of their security deposit and for labour costs; therefore it was not necessary for the Arbitrator to consider the date the notice to end the tenancy was received in order to make a determination as to whether the parties complied with section 38 of the Act and a reading of the Decision affirms that that this issue was of no consequence to the Arbitrator.

Additionally the Arbitrator dismissed the tenants' request for labour compensation and therefore there would be no different outcome of the Decision with regard to this issue.

As to the issue of whether or not the landlords were served with registered mail, the tenant submitted documentary proof showing registered mail service, that the mail was returned unclaimed and therefore it was not necessary for the Arbitrator to rely on the statements of the tenants.

I therefore find that the applicants/landlords submitted insufficient evidence to support their claim that the Decision was obtained through fraud.

I must also address the landlords' reference to a potential sale of the rental unit to the tenants. After a review of all evidence, I do not find that the Arbitrator was excluded from issuing a Decision based upon a jurisdictional issue as I find the evidence supports that a tenancy as defined under the Residential Tenancy Act existed between the parties. Although the landlords requested the tenants to pay the property tax, the tenants did not do so.

I further find, pursuant to Section 81(1)(b)(iii) of the Act, the landlords' application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied. In reaching this conclusion, the landlords submitted evidence with their application for review, an email of September 13, 2012, from the landlord to the tenant in which the landlord informed the tenant they (the landlords) would not be returning the security deposit to the tenants. Therefore the Arbitrator made the correct decision in finding the landlords violated their obligation under section 38 of the Act and in ordering the return of the security deposit.

#### Decision and Conclusion

I dismiss the landlords' application for review and confirm the original decision and order of April 30, 2013.

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: May 30, 2013

---

Residential Tenancy Branch