Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNSD

Introduction

On May 22, 2013, a hearing was conducted based on the tenant's application to recover the security deposit. The landlord did not attend the hearing and the Arbitrator granted the tenant's application giving the tenant a Monetary Order for double the security deposit. The landlord has applied for a review of this Decision and Order.

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.

Issues

The applicant relies on sections 79(2)(a) and 79(2)(b) of the *Residential Tenancy Act* (the "Act"). That the party was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the party's control. The party has new and relevant evidence that was not available at the time of the original hearing.

Facts and Analysis

Unable to Attend

In order to meet this test, the application must establish that the circumstances which led to the inability to attend the hearing were both:

- beyond the control of the applicant, and
- could not be anticipated.

In this application for review, the landlords submit that the reason for not attending the hearing is because the landlords were not informed of the hearing and no invitation to attend the hearing was received. The landlords submit that they have never received or returned mail from the tenant as stated in the Dispute Resolution Services letter for the hearing. Therefore, the landlords submit that they were unaware that a compliant had been filed by the tenant or that a hearing was taking place.

The original documentation provided by the tenant for the hearing contained a Canada Post registered mail tracking number and the envelope posted to the landlords containing the hearing documents. This envelope had been returned to the tenant by Canada Post. On this envelope Canada Post has clearly written that the envelope was refused at the door. Section 90 (a) of the *Residential Tenancy Act* states;

> A document given or served in accordance with section 88 *[how to give or serve documents generally]* or 89 *[special rules for certain documents]* is deemed to be received as follows:
>
> (a) if given or served by mail, on the 5th day after it is mailed;

Therefore, I find that the landlords are considered to have been served with the hearing documents. As the landlords refused to accept these documents the landlords' application for review on this ground must fail.

New and Relevant Evidence

Leave may be granted on this basis if the applicant can prove that:

- he has evidence that was not available at the time of the original hearing;
- the evidence is new,
- the evidence is relevant to the matter which is before the Dispute Resolution Officer,
- the evidence is credible, and
- the evidence would have had a material effect on the decision of the Dispute Resolution Officer

Only when the applicant has evidence which meets all five criteria will a review be granted on this ground.

On this ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, the landlords have attached a copy of the original decision and copies of hand written notices and a letter from the tenant. However, as this evidence was available at the time of the original hearing and the landlords did not attend the hearing to present evidence because the landlords did not accept the registered mail I find that the application for review on this ground must fail. In any event as explained in the original decision, as the landlords did not return the tenants security deposit with 15 days of receiving the tenants forwarding address in writing or file an application to keep it within that 15 day time period as specified under s. 38 (1) of the *Act*; the tenant has a right to recover double the security deposit regardless of when Notice was provided to end the tenancy.

Decision

The landlords' application for review is dismissed.

The decision made on May 22, 2013 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: June 06, 2013

Residential Tenancy Branch