



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNSD

Introduction

The landlord has applied for a review consideration of a decision dated May 23, 2013, granting the tenant a monetary 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.

The landlord has applied on ground 1 for the Review Consideration

Issues

1. Was the landlord unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control?

Facts and Analysis

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

- beyond the control of the applicant; and
- not anticipated.

A dispute resolution hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.

The landlord writes in their application that he was unable to attend the hearing because, “paper work with hearing date was lost or stolen and I thought I was to receive a phone call for the hearing. I was unaware I was suppose to call them.”

The landlord acknowledged receiving the hearing documents. The Notice of Dispute Resolution Hearing document provided specific details to the parties which in part reads, “.... this hearing will be conducted by **TELEPHONE CONFERENCE CALL**. Please use one of the following phones numbers and passcode below to join the Telephone Conference Call.”

[Reproduced as written]

In this case, the landlord claims to have had his paper work lost or stolen. The landlord further claims he was unaware he was required to call into the conference call.

The landlord is in a business of renting and has duty when served with a dispute resolution documents to read those documents. The documents provide clear instructions on how the hearing will be conducted and the date and time of the hearing.

Further, if the landlord lost those documents or if they were stolen, it would have been reasonable for the landlord to contact the Residential Tenancy Branch to receive an additional copy. Therefore, I find through reasonable planning, the landlord could have attended the hearing.

Therefore, I find the landlord has failed to establish the grounds that he unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control.

The landlord further writes in their application, what testimony or additional evidence they would have provided if you were at the hearing, “[name] is \$220 short on December rent and it cost me \$80 dollars to clean up the mess she left behind. My water bill was \$700 the month she left because the water hose was left on for days. I can’t prove it was her.....”

[Reproduced as written]

Even if the submission of the landlord was accepted, the landlord did not file an application for dispute resolution to seek permission to retain any portion of the security deposit as required by the Act. Under the Act, the landlord is not entitled to retain the security deposit simply because they feel it is justified.

Therefore, I find the application discloses no basis on which, the decision or orders should be set aside or varied.

Decision

Based on the above, the application and on a balance of probabilities, I find the landlord's application must be dismissed.

Therefore, I find the decision and orders made on May 23, 2013, stand and remain in full force and effect. The landlord's application for review is dismissed.

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 03, 2013

Residential Tenancy Branch