



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes MNSD, 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 grounds of unable to attend and new and relevant evidence that was not available at the time of the original hearing.

In her application for review, the applicant states that on March 23, 2013, the parties communicated by text messaging and resolved the issue of the return of the security deposit. The landlord states that despite damage to the flooring, she agreed to return the security deposit and filing fee to the tenant. According to the arrangement made by text message, the landlord returned the security deposit and filing fee by interact E transfer of funds to the tenant's account. Upon completion of the transaction, the landlord sent the tenant a text message confirming the same. The landlord filed proof of this transaction.

The landlord states that the tenant told her that she would cancel the hearing and therefore the landlord did not attend the hearing. The landlord states that after receiving the decision and order, she found out that the hearing was not cancelled and that the funds were not accepted by the tenant and after the time to accept funds expired, the funds were returned to the landlord's account.

The landlord states that had she attended she would have testified about the arrangement made to settle matters in a conversation between the parties on March 23, 2013 and how she followed up on the arrangement.

Analysis

I find that the tenant did not inform the Arbitrator during the hearing that she had agreed to resolve the issue prior to the hearing by accepting \$700.00 from the landlord. The landlord did not attend the hearing because she believed that the matter had been resolved after the tenant agreed to accept \$700.00 by transfer to her bank account.

On the basis of the information presently before me, I am satisfied that the tenant did not inform the Arbitrator that the landlord had sent her the funds and that she did not accept them. The tenant informed the Arbitrator that the arrangement was for the landlord to send her a cheque which she had not received. The Arbitrator made a decision based on the evidence in front of her. I find that the evidence regarding the conversation and arrangement made by the parties on March 23, 2013 may have some impact on the final outcome.

Conclusion

I order that a new hearing take place and I order that the decision and order made on May 24, 2013 are suspended pending completion of the new hearing. Notice of time and date of the hearing are included with this Review Consideration Decision for the landlord to serve the tenant within 3 days of receipt of the Notice of 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.

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 18, 2013