



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78, as amended.

Introduction

On July 22, 2013 a hearing was scheduled to deal with a landlord's application for compensation for damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The landlord did not appear at the hearing but the tenant did. Since the landlord did not appear the Arbitrator dismissed the landlord's Application for Dispute Resolution and ordered the landlord to return the security deposit to the tenant.

The landlord filed an Application for Review of the above decision on August 26, 2013. The landlord submitted that he received the July 22, 2013 decision on August 15, 2013. In the absence of evidence to the contrary, I accept the landlord's submissions and conclude that the landlord has filed this Application for Review with the time limit required under the Act.

Section 79(2) under the *Residential Tenancy Act* provides that a party to a 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 filed this Application for Review on the basis he was unable to attend the hearing and that he has new and relevant evidence that was not available at the time of the hearing.

Issues

1. Has the landlord established that he was unable to attend the hearing due to circumstances that could not be anticipated and were beyond his control?
2. Has the landlord presented new and relevant evidence?

Facts and Analysis

Under “Unable to Attend” the landlord indicated that he was did not know there was a hearing and that he was unaware of the hearing date or time. The landlord further submitted that he was of the belief the file had been closed. The landlord did not provide any other details to explain why he thought the file had been closed.

Under “New and Relevant Evidence” the landlord submitted that had he known evidence could be submitted on-line he would have presented electronic pictures showing the condition of the property to the Residential Tenancy Branch. The landlord did not submit any evidence with this Application for Review and I have not considered this ground for review any further.

Upon review of the landlord’s Application for Review I note the following:

- The landlord submitted an Application for Dispute Resolution, along with photographs, receipts, and written submissions as evidence, and paid the applicable filing fee on May 14, 2013 at the Terrace Service BC Centre.
- A hearing date was scheduled and hearing packages were prepared by the Residential Tenancy Branch on May 15, 2013. The hearing packages were sent to the Terrace Service BC Centre.
- On May 15, 2013 a Scheduler with the Residential Tenancy Branch telephoned the landlord at the telephone number he provided on his Application for Dispute Resolution and left a message with instructions for him to pick up the hearing packages at the Terrace Service BC Centre and serve a hearing package upon the tenant no later than May 18, 2013.

I further note that there is no indication on the file that the landlord requested the hearing be cancelled. Where a hearing has been cancelled the applicant must make such a request to the Residential Tenancy Branch and confirm that the respondent has been notified of the cancellation. Since the tenant appeared at the scheduled hearing and in the absence of any evidence to suggest the landlord requested the Residential Tenancy Branch cancel the hearing I find it unlikely the landlord made efforts to request the hearing be cancelled. As the hearing was not cancelled, and in the absence of further particulars from the landlord, I find the landlord has not provided a reasonable basis for taking the position the file had been “closed”.

The landlord was provided an opportunity to establish an entitlement to compensation from the tenant was during the hearing scheduled to hear his application on July 22, 2013. I find the landlord has not presented sufficient or reasonable grounds to support his conclusion that the file had been “closed” or that the hearing was cancelled. Therefore, I find the landlord has not established that he was unable to attend the hearing due to circumstances that were not anticipated and were beyond his control.

In light of the above, I dismiss the landlord’s request for a review hearing. As such, the decision and Monetary Order issued July 22, 2013 stand and remain enforceable.

Decision

The landlord’s Application for Review has been dismissed.

The decision and Order made on July 22, 2013 stand and remain enforceable.

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: August 29, 2013

Residential Tenancy Branch