



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD OPR

Introduction

This Application was filed by the tenant on October 08, 2013, seeking a Review Consideration of the Decision and Order dated September 24, 2013 and having received the Order of Possession on October 4, 2013 on her door. The Decision and Order granted the landlord an order of possession and authority to the landlord to retain the tenant's security deposit in satisfaction of unpaid rent and/or loss of rent.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of a 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 tenant has applied on the first ground.

Issue

- Has the tenant provided evidence that she was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond her control?

Facts and Analysis

The Application contains information under section C1 on why the tenant could not attend the original hearing held on September 24, 2013.

The tenant writes in her Application:

“I was never given any notice that a RTB hearing was taken place.”

[Reproduced as written]

In the Review Consideration Application portion of the Application entitled “What testimony or additional evidence would you have provided if you were at the hearing?” the tenant writes in her Application:

“The Landlord did not repair my mailbox for over 2 months, this can be verified through Canada Post, and she either knew I wouldn’t receive notice/or stole the “certified” letter out of my box as she has a key.”

[Reproduced as written]

The tenant provided a five page letter attached to her Application in support of her Application which included a statement on page four which reads in part:

“...I had no mail because the Landlord had failed to replace my mailbox lock for over 2 months after someone broke into it. So all my mail was held at Post Office and I couldn’t pick it up wt no id...”

[Reproduced as written]

Decision

Based on the above, the evidence and Application submitted, and on a balance of probabilities, I find the following.

In order to be successful on the first ground for Review, the tenant must prove, based on a balance of probabilities, that the circumstances that prevented her from attending the hearing (which was held by telephone conference call), were both unanticipated and beyond her control.

Policy Guideline 24, which deals with Review Considerations, sets out the following about this ground of Review:

“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.”

[Reproduced as written]

The tenant has applied for a Review Consideration by alleging that she did not receive the Notice of a Dispute Resolution Hearing due to the landlord failing to repair her mailbox and sending registered mail to her knowing she could not receive her mail. As described above, the tenant states on page four of her letter attached to her Application:

“...I had no mail because the Landlord had failed to replace my mailbox lock for over 2 months after someone broke into it. So all my mail was held at Post Office and I couldn't pick it up wt no id...”

[Reproduced as written]

Based on the above, **I find** the tenant has provided insufficient evidence to support that the landlord did not repair her mailbox, and insufficient evidence of her attempts to obtain new identification if her lack of identification was preventing her from receiving her mail at the post office. Furthermore, **I find** the tenant could have anticipated the importance of obtaining new identification and failed to provide supporting evidence of any such attempts. **I find** that the tenant has provided no supporting evidence to prove that the actions of the landlords have prevented the tenant from receiving registered mail and I note that the neglect or failure to check for registered mail does not constitute grounds for a new hearing.

For the tenant to have been successful, the tenant could have provided a letter from the post office confirming her allegations that she is unable to receive registered mail, and evidence of her attempts to obtain new identification. In addition, the tenant could have provided supporting evidence, such as photographs of a broken mailbox, none of which were submitted by the tenant. Given the above, **I dismiss** the tenant's application that she was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond her control due to insufficient evidence.

The decision and order made on September 24, 2013, stand and remain in full force and effect.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 15, 2013