



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes:

Introduction

On August 29, 2013 an Arbitrator authorized the landlord to retain the tenants' security deposit and provided the landlord with a Monetary Order for the balance of \$3,950.00 for loss of rent, missing appliances and cleaning.

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 tenants have filed a Request for Review on the first and third ground described above.

Issues

1. Have the tenants demonstrated that they were unable to attend the original hearing due to circumstances that could not be anticipated and were beyond their control?
2. Have the tenants provided evidence that the decision and Monetary Order issued August 29, 2013 were based on fraud?

Facts and Analysis

The tenants indicate that they were not at the original hearing because they did not receive the hearing documents and were unaware of the hearing.

The Arbitrator stated in her decision that the landlord provided evidence that the hearing documents were sent to each of the tenants via registered mail and were refused by the tenants. Included in the landlord's documentary evidence were two registered mail tracking numbers; a print-out from Canada Post showing that the registered mail was refused by recipient"; and, the registered mail envelope that was sent to the female tenant and returned to the landlord. I note that the envelope sent to the tenant has her correct name and bears the same address that appears on the Request for Review filed by the tenants.

The landlord had also provided a statement that prior to sending the hearing documents via registered mail he had attempted to give the hearing documents to the tenants in person by attending their new residence but that the female tenant would not open the door, claiming she was taking a shower.

Section 90 of the Act deems a document to be received five days after mailing so that a recipient cannot avoid service by refusing to accept or pick up their mail. The Arbitrator proceeded to hear from the landlord without the tenants present on this basis.

Based upon the evidence provided by the landlord that demonstrates he served the tenants with the hearing documents in a manner that complies with the Act and evidence that the tenants' refused to accept the documents, I find that the tenants were unaware of the hearing due to their own actions that were within their control. Therefore, I find the tenants have not established a basis for a review hearing on the first ground for review as described above.

The tenants' assertion that the decision and Order were based on fraud concerns appliances that were taken from the basement unit at the end of the tenancy. Both the tenants and the landlord have provided consistent submissions that there were existing appliances in the basement unit when the tenancy started and that the tenants provided replacement appliances for the basement unit during their tenancy. The inconsistencies appear to concern the condition of the existing appliances provided by the landlord, the disposal of the existing appliances, and what was to happen at the end of the tenancy with respect to the appliances the tenants had provided. Below, I have summarized the respective parties' submissions concerning the appliances:

- The landlord had submitted that he had provided the tenants with functional appliances in the basement unit at the start of the tenancy but that the tenants wanted to install nicer appliances. The landlord had submitted that he had given the tenants consent to replace the existing appliances with their own provided

they left the replacement appliances in the unit when they left. The landlord claimed he spent \$450.00 to replace the appliances and sought compensation from the tenants as they breached their agreement to leave their appliances in the unit when they left.

- The landlord also submitted to the Arbitrator that the tenants had disposed of the landlord's existing appliances, whether that be by selling them or scrapping them.
- By way of the Request for Review, the tenants state that the landlord's existing appliances were old and unfit and that the landlord had disposed of them himself in January 2012. The tenants acknowledge taking the replacement appliances when they moved out because they had purchased them.
- The tenants did not provide any submissions with respect to the landlord's assertion that the tenants had promised to leave the replacement appliances in the unit.

Residential Tenancy Policy Guideline 24: *Review Consideration of a decision or order* provides information with respect to requesting a review hearing. With respect to fraud, the policy guideline provides, in part:

The application for the review consideration must be accompanied by sufficient evidence to show that false evidence on a material matter was provided to the RTB, and that this evidence was a significant factor in the making of the decision. The application package must show the newly discovered and material facts were not known to the applicant at the time of the hearing, and were not before the RTB. The application package must contain sufficient information for the person conducting the review to reasonably conclude that the new evidence, standing alone and unexplained, supports the allegation that the decision or order was obtained by fraud.

It is not in dispute that the tenants provided replacement appliances during the tenancy. In making her decision to compensate the landlord, the Arbitrator accepted the landlord's submissions and concluded that the tenants had promised to the landlord that they would leave the replacement appliances in exchange for his consent to dispose of the exiting appliances. I find the promise to leave the appliances was a significant factor in reaching the decision; yet, in filing this Request for Review, the tenants did not deny or refute the landlord's position that they had promised to leave the replacement appliances.

In reading the Arbitrator's analysis I note the Arbitrator accepted the landlord's submission that the tenants had disposed of the existing appliances and I accept that this was a significant factor in her decision since it is stated in the analysis. The tenants have refuted this portion of the landlord's submission in filing their Request for Review. However, their position is not based upon newly discovered facts or evidence as they claim the landlord disposed of the appliances in January 2013 and they could have been provided position during the original hearing had they attended the hearing. For reasons already provided, I have found that the tenants did not attend the original hearing due to their own actions and as such, thwarted their opportunity to have their position considered.

In light of the above, I find the tenants have not satisfied their burden to prove the landlord's submissions concerning the appliances were fraudulent or that the decision of the Arbitrator would have been any different had they made their position known to her at the original hearing. Therefore, I deny the tenant's request for a review hearing based on the ground of fraud.

As the tenants have not established a ground for a review hearing their Request for Review Consideration is dismissed with the effect that the decision and Monetary Order issued on August 29, 2013 stand and remain enforceable.

Decision

The tenants' Request for Review has been dismissed.

The decision and Monetary Order made on August 29, 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: September 25, 2013

Residential Tenancy Branch