



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes MNSD

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 ground of unable to attend. In her application for review, the landlord states that she was not served with the notice of hearing and was therefore unaware of the hearing that took place on September 12, 2013. The applicant states that she only found out about the hearing when she was served with the monetary order that was issued to the tenant after the hearing. The landlord states that the monetary order was served in person but according to the decision, the notice of hearing was served by registered mail. The landlord states that the tenant could have easily served the hearing package in person.

Analysis

During the hearing, based on the tenant's testimony, the Arbitrator found that the landlord was served with the notice of hearing. Even if I accept that the landlord was not served and therefore did not attend the hearing, I now have to determine whether the landlord's attendance and testimony would have changed the outcome of the hearing.

The Arbitrator made the decision based on section 38 of the Act which provides that within 15 days of the end of the tenancy and the tenant having provided a forwarding address in writing, the landlord must either file an application for dispute resolution or return the deposit in full to the tenant. In this case, the landlord did neither and therefore the Arbitrator found that the landlord was not entitled to retain the deposit and ordered the landlord to return the deposit to the tenant.

After having received the monetary order from the tenant, the landlord has not provided any new evidence with her application for review that might indicate that she did not receive the tenant's forwarding address in writing or that she made application to retain the security deposit or a portion of the security deposit.

The landlord may be entitled to recover damages from the tenant but cannot simply keep the security deposit without the consent of the tenant or without making application to keep it. Even if the landlord had attended the hearing, I find that her testimony would not have changed the decision of the Arbitrator and her claim if any for damages would not have been heard as the hearing was convened solely to address the tenant's application. The landlord is at liberty to make her own application to recover damages.

Section 81(1) (b) (iii) of the Act allows the director to dismiss an application for review if the application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied. Accordingly, I find that the application for review on this ground must fail.

Conclusion

I dismiss the Application for Review Consideration. The original decision and order made on September 13, 2013 is confirmed.

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: October 02, 2013

Residential Tenancy Branch

