



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNSD

Introduction

This review consideration decision is in response to an Application for Review Consideration filed by the Landlord pursuant to section 79 of the *Residential Tenancy Act* (Act). Specifically, the Landlord is requesting a review of the decision and Order made by an Arbitrator on October 10, 2013, in which the Tenant was granted a monetary Order in the amount of \$718.73.

The Landlord is requesting the review on the basis that the Landlord was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the party's control; that the Landlord has new and relevant evidence that was not available at the time of the original hearing; and that the Landlord has evidence that the director's decision or order was obtained by fraud. The Landlord only needs to establish that one of these grounds exists.

Section 79 of the Act reads:

- (1) A party to a dispute resolution proceeding may apply to the director for a review of the director's decision or order.
- (2) A decision or an order of the director may be reviewed only on one or more of the following grounds:
 - (a) a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control;
 - (b) a party has new and relevant evidence that was not available at the time of the original hearing;
 - (c) a party has evidence that the director's decision or order was obtained by fraud.

Issues

Has the landlord established grounds for review pursuant to section 79 of the Act?

Facts and Analysis

In her decision The Arbitrator noted that at the hearing the Tenant testified that the Application for Dispute Resolution and Notice of Hearing were served to the Landlord by

registered mail on July 15, 2013; The Arbitrator noted that the registered mail receipt was submitted as evidence; and The Arbitrator noted that the registered mail envelope, showing the mail was unclaimed, was submitted as evidence.

In support of the application for review pursuant to section 79(2)(a) of the *Act*, the Landlord declared that the “registered letter directed to (name removed for privacy purposes, but will be referred in this decision as “P.H.”) – who does not live in Dunsmuir Apartments – letter never delivered”. I find it reasonable to presume that the registered letter the landlord is referring to in this declaration is the registered mail that was sent on July 15, 2013.

On the basis of the registered mail envelope submitted in evidence, I find that the registered letter was sent to “P.H” at apartment #615 in the residential complex that is the subject of this dispute. As “P.H.” is the individual who submitted the Application for Review Consideration, I find that he is an agent for the Landlord. On the basis of the declaration in the Application for Review Consideration, I find that “P.H.” does not reside at this apartment. I note that these documents can be mailed to this address even if “P.H.” does not reside at the address, providing it is an address used by the Landlord as a business address.

I find that I have insufficient evidence to conclude that the Landlord conducts business at apartment #615 in the residential complex that is the subject of this dispute. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence that indicates this apartment was used as a business address for the Landlord.

As it is possible that the Application for Dispute Resolution and Notice of Hearing were sent to an incorrect mailing address, I find that the Landlord has established grounds for review pursuant to section 79(2)(a) of the *Act*.

In the Application for Dispute Resolution that Landlord alleged that the Landlord had authorization from the Tenant to withhold \$268.73 from the security deposit. In her decision The Arbitrator noted that the Tenant submitted she did not authorize the Landlord to keep any portion of the deposit. I find that the Landlord has raised a significant issue that, upon closer examination and consideration, may cause the director to set aside or vary The Arbitrator’s decision and Order. Therefore I grant the Landlord’s application for a review and I order that a new hearing be convened, pursuant to section 82(2)(c) of the *Act*.

Decision

Notices of the time and date of the hearing will be mailed to the Landlord for the Landlord to serve to the Tenant within 3 days of receipt of the Notices. The Landlord must also serve a copy of this Decision to the Tenant.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at <http://www.rto.gov.bc.ca/content/publications/factSheets.aspx> that explain evidence and service requirements. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020

Victoria: 250-387-1602

Elsewhere in BC: 1-800-665-8779

The Tenant must also serve the Landlord with a copy of the Application for Dispute Resolution and all evidence they submitted for the original 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: October 28, 2013

Residential Tenancy Branch