



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes      FF MNSD OLC RPP

### Introduction

On November 6, 2013 Arbitrator XXXXX provided a decision on the tenants' Application for Dispute Resolution seeking to return of their security deposit; and personal property. The hearing had been conducted on November 5, 2013.

That decision granted the tenants a monetary order in the amount of \$1,272.88 for return of double the security deposit; compensation for failing to return personal possessions; and to recover the filing fee for their Application. The landlord did not request an extension of time to apply for Review Consideration.

Division 2, 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 landlord submits in his Application for Review Consideration that he has evidence that the director's decision was obtained by fraud.

### Issues

It must first be determined if the landlord has submitted his Application for Review Consideration within the legislated time frames required for reviews.

If the landlord has submitted his Application within the required time frames it must be decided whether he is entitled to have the decision of November 6, 2013 suspended with a new hearing granted because he has provided sufficient evidence to establish that the tenant obtained the decision based on fraud.

### Facts and Analysis

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 15 days after a copy of the decision or order

is received by the party, if the decision does not relate to a matter of possession of the rental unit; a notice to end tenancy; withholding consent to sublet; repairs or maintenance or services and facilities.

From the decision of November 6, 2013 the issues before the Arbitrator were related to the tenant's claim for return of their security deposit and possessions. As such, I find the decision the landlord is requesting a review on allowed 15 days to file his Application for Review Consideration.

From the landlord's submission he received the November 6, 2012 decision on November 12, 2013 and filed his Application for Review Consideration with the Residential Tenancy Branch on November 13, 2013 (1 day after receipt of the decision). I find the landlord has filed his Application for Review Consideration within the required timelines.

The landlord submits that "there was NO 'two original' deposit receipts as claimed by the tenants." The landlord explains that he had only provided the tenants with one receipt in relation to the security deposit. The landlord submits that if there was a second receipt he has never seen it and that it should have been provided by the tenants as evidence.

The decision does not refer to any testimony provided by the tenants or the landlord regarding two receipts for the security deposit. However in his analysis the Arbitrator wrote: "The return of one or two 'original' receipts, even signed by the tenants, is not proof of the return of the deposit."

Review of the physical file for the original hearing shows that tenants provided a copy of only one receipt. As such, while I find it is unclear what the Arbitrator meant when he referred to "two 'original' receipts and in the absence of any additional evidence from the landlord regarding two receipts I find the landlord has failed to establish the tenant's obtained the decision based on any fraudulent evidence or testimony.

Section 81 of the *Act* stipulates that the director may dismiss an Application for Review Consideration if the application:

1. Does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
2. Does not disclose sufficient evidence of a ground for the review;
3. 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; or
4. Is frivolous or an abuse of process.

As the landlord has also not provided any additional evidence with his Application for Review Consideration to confirm that he had returned the security deposit to the tenants I find that he has provided no evidence to establish a basis on which, even if I were to find a ground to grant a new hearing, that the decision would be set aside or varied.

Decision

Based on the above, I dismiss the landlord's Application for Review Consideration.

The decision made on November 6, 2013 stands.

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: November 22, 2013