



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## Review Consideration Decision

Dispute codes: MNSD

### Introduction

This is an application filed by the landlord for review of a decision of an Arbitrator dated November 05, 2013. Pursuant to the decision a monetary order was issued in favour of the tenants, which reflects the double return of the security deposit in addition to recovery of the filing fee. The landlord did not attend the hearing.

Division 2, Section 79(2) of the *Residential Tenancy Act* provides 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.

### Issues

The application for review is filed on the basis of ground # 1, although the landlord has also submitted photos which she claims constitute "new and relevant evidence."

### Facts and Analysis

**Was the landlord unable to attend the original hearing because of circumstances that could not be anticipated and were beyond her control?**

In order to meet this test, the landlord must establish that the circumstances which led to the inability to attend the hearing were both:

- beyond the control of the landlord, and
- could not be anticipated

In her application the landlord claims she “was not aware of the date of the hearing.” However, in relation to service of the hearing package the Arbitrator found, in part:

The Tenant provided affirmed testimony and submitted documentary evidence which indicates the Landlord was served with copies of the application for dispute resolution and Notice of dispute resolution hearing on September 25, 2013, by registered mail. Canada Post receipts were provided in the Tenants’ evidence. Based on the submissions of the Tenant I find the Landlord is deemed served notice of this proceeding on September 30, 2013, five days after it was mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Landlord’s absence.

I note that the Canada Post website informs, in part, as follows:

**September 26, 2013:**

Attempted delivery. Notice card left indicating where item can be picked up.

**October 2, 2013:**

Final notice; Item will be returned to sender if not collected within 10 days.

I find that the landlord’s failure to collect the hearing package from the Post Office does not invalidate the service provisions of the Act.

Further, even while the landlord has submitted photographs taken within the unit which she considers to be “new and relevant evidence,” in her application she has not disputed the Arbitrator’s finding that she did not comply with section 38 of the Act which speaks to **Return of security deposit and pet damage deposit**. In this regard, the Arbitrator found, in part, as follows:

...I find that the Landlord has failed to comply with Section 38(1) of the Act and that the Landlord is now subject to Section 38(6) of the Act which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Finally, section 81 of the Act speaks to **Decision on application for review**, in part:

81(1) At any time after an application for review of a decision or order of the director is made, the director may dismiss or refuse to consider the application for one or more of the following reasons:

(b) the application

- (i) does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely,
- (ii) does not disclose sufficient evidence of a ground for the review,
- (iii) 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...

Decision

For the reasons set out above, the application for review is hereby dismissed. The original decision and order dated November 05, 2013 are hereby 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: November 27, 2013

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Residential Tenancy Branch