



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: MNSD

### Introduction

On November 5, 2013 Arbitrator XXXXX provided a decision on the tenant's Application for Dispute Resolution seeking to return of his security deposit. The hearing had been conducted on November 5, 2013.

That decision granted the tenant a monetary order in the amount of double the security deposit. 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 her Application for Review Consideration that that she has new and relevant evidence that was not available at the time of the original hearing. The landlord's Application for Review Consideration did provide a response to when she received either the decision or the order nor did it include a copy of the decision or order.

### Issues

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

If the landlord has submitted her Application within the required time frames it must be decided whether the landlord is entitled to have the decision of November 5, 2013 suspended with a new hearing granted because she has provided sufficient evidence to establish that she has new and relevant evidence that was not available at the time of the original hearing.

## 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 5, 2013 the issues before the Arbitrator were related to the tenant's claim return of his security deposit. As such, I find the decision and order the landlord is requesting a review on allowed 15 days to file her Application for Review Consideration.

From the landlord's submission I am unable to determine when she received a copy of either the decision or the order. I can confirm the landlord submitted her Application for Review Consideration with the Residential Tenancy Branch on December 30, 2013.

Based on the balance of probabilities I find it unlikely that the landlord would have received the decision and/or order as late as December 15, 2013. In the absence of any other information I find I cannot determine if the landlord has submitted her Application for Review Consideration within the required time frames.

Even if the landlord had provided sufficient information to determine if she had submitted her Application for Review Consideration within the required time frames I find she has also failed to provide sufficient evidence to establish that she had a ground to be granted a new hearing or that the outcome of that hearing would change the original decision.

Firstly, the landlord submits that she had third party witnesses for damage to the rental unit. She does not indicate why this information, either in the form of written statements or oral testimony, was not available at the time of the original hearing.

Additionally, as the hearing was conducted to adjudicate the tenant's Application to determine if the landlord had fulfilled her obligation to either return the deposit or file her own Application to claim against the deposit any evidence of damage to the rental unit had no bearing on the outcome of the hearing. However, should the landlord wish to file her own Application to claim compensation for any damage caused to the rental unit she remains at liberty to do so.

Secondly, the landlord submits that she has proof of being provided an incorrect forwarding address from the tenant, however, there is no indication in the decision that the landlord ever used the tenant's address to attempt to return the deposit to him. In fact, the decision clearly outlines that the landlord had had no intention of returning the deposit to the tenant because she felt he had caused damage to the rental unit in excess of the value of the deposit.

Further, while the landlord submits the tenant had provided her with an incorrect postal code in his May 29, 2013 correspondence I note that she did have his correct postal code when she received a copy of his Application for Dispute Resolution sometime in early August 2013 and she still did not attempt to return the deposit within 15 days of receiving that information.

### Decision

For the reasons noted above, I dismiss the landlord's Application for Review Consideration.

The decision made on November 5, 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: January 06, 2014