



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing originally convened on March 10, 2020. The tenants were granted a monetary award in the amount of \$12,400.00 in a Decision dated March 11, 2020. The landlord applied for Review Consideration of the March 11, 2020 Decision. In a Review Consideration Decision dated March 26, 2020, an Arbitrator made the following Order:

I order that a new hearing of the original application take place. The Decision and attached orders are suspended until that hearing is completed.

Notices of the time and date of the hearing are included with this Review Consideration Decision for the landlord to serve to the tenants within 3 days of receipt of this decision.

The landlord and the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that he e-mailed the tenants with the Review Consideration Decision and Notice of Hearing but could not recall on what date. No supporting documentation was entered into evidence.

The tenants testified that they were not served with the Notice of Hearing Documents or a copy of the Review Consideration Decision and only became aware of this hearing when they called the Residential Tenancy Branch for details on the outcome of the Review Consideration Decision. The tenants testified that they were not served with any evidence from the landlord.

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the landlord did not prove, on a balance of probabilities, that the tenants were served with a copy of the Review Consideration Decision and the accompanying Notice of Review Hearing Documents in a manner required by section 89(1) of the *Act* or the March 30, 2020 Director's Order.

Pursuant to section 81 of the *Act*, the director may dismiss or refuse to consider an application for review if the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

I find the landlord has prejudiced the tenants' ability to respond or prepare for this review hearing by not serving the tenants in accordance with the *Act* or the March 30, 2020 Director's Order and in accordance with the instructions contained in the Review Consideration Decision.

I dismiss the landlord's application for review. The March 11, 2020 Decision and Orders are therefore 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: July 09, 2020

Residential Tenancy Branch