



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: RPP

Introduction

The Tenants apply for a review of the Decision dated July 27, 2012 on the basis of new and relevant evidence and on the basis that the decision was obtained by fraud.

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.

Issues

Are the Tenants entitled to a review hearing?

Facts and Analysis

The Tenants submit that due to an error by Canada Post, the Landlord's evidence containing their response to the Tenants' claim was not received by the Tenants. The Tenant submits that knowledge of this postal error was gained after the Hearing and that this evidence contains new and relevant information, in particular, the Landlord's response to the Tenants' claim. It is noted that the Decision does not rely on this evidence as it was served late to the Tenants. The Tenants submit that as a result of

this evidence not being received, the Tenants were unaware that the Landlord would argue that the Tenants' personal property was valued at less than \$500.00. In dismissing the application, the Decision finds that the Tenants failed to prove a value of greater than \$500.00.

The Tenants further submit that the Landlord knowingly gave false information at the Hearing to support the finding of a reasonable belief of abandonment. It is noted that the Decision accepts the Landlord's evidence at the Hearing that the Landlord had disposed of the Tenants' personal property due to not having heard from the Tenants until receipt of the Tenants' claim, made on July 6, 2012. The Tenants submit that the Landlord's evidence package contains a contradictory submission by the Landlord that following the end of the tenancy, the Tenants informed the Landlord of their intention to return for their possessions. It is noted that the Landlord's evidence package contains a statement from the Landlord that following the end of the tenancy, during the evening of July 1, 2012 the Landlord was informed by the Tenant of the Tenant's intention to return to the unit for their property. In dismissing the application, the Decision notes in the facts that the Landlord did not know of the Tenants' intention to collect their property until she received notice of their claim, noted to have been made by the Tenants on July 6, 2012. The Decision finds the Landlord's belief of abandonment to be reasonable based on the Landlord's evidence of not having "received further notice from the tenants".

In order to show that a decision was obtained by fraud, the applicant must show, on a balance of probabilities, that the other party knowingly submitted false information in order to get the desired outcome. Given the statements contained in the Landlord's evidence package of the Tenants notifying them following the end of the tenancy that they would return and considering the Landlord's evidence at the Hearing that they had not heard from the Tenants, I find on a balance of probabilities that following the end of the tenancy the Landlord's knew of the Tenants' intention to collect their belongings and that the Landlord gave false information about this knowledge at the Hearing in order to

obtain a dismissal of the Tenants' claim for a return of their personal property. As a result, I find that the Tenants are entitled to a Review Hearing.

Decision

I hereby order that the Decision dated July 27, 2012 be suspended until a Review Hearing has been completed.

The Review Hearing is scheduled for **October 1, 2012 at 2:30 p.m.** and will be conducted by telephone conference call. Failure to attend the hearing at the scheduled time, with all relevant documents and/or witnesses, will result in a decision being made on the basis of any information before the dispute resolution officer and the testimony of the party in attendance at the hearing. **Notices of the time and date of the hearing are included with this Review Decision for the Tenants to serve to the Landlord within 3 days of receipt of this Decision.**

Although the Tenant has provided evidence with its application for review consideration, a copy of that evidence must be served on the Landlord. Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to rely upon at the new 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: August 29, 2012.

Residential Tenancy Branch