Dispute Resolution Services

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR MNSD

Introduction

On September 19, 2012 Dispute Resolution Officer (DRO) XXXXX provided a decision on the landlord's Application for Dispute Resolution seeking a monetary order. The hearing had been conducted on September 19, 2012.

That decision dismissed the landlord's Application as the landlord failed to attend the hearing. 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 their Application for Review Consideration that they were unable to attend the original hearing because of circumstances that could not be anticipated and were beyond her control.

Issues

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

If the landlord has submitted their Application within the required time frames it must be decided whether the landlord is entitled to have the decision of September 19, 2012 suspended with a new hearing granted because they have provided sufficient evidence to establish that they were unable to attend the hearing for unexpected reasons that were beyond her control.

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 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 landlord's submission they indicate that they received the September 19, 2012 decision on September 24, 2012 and filed their Application for Review Consideration with the Residential Tenancy Branch on September 26, 2012 (2 days after receipt of the decision and order). I find the landlord has filed their Application for Review Consideration within the required timelines.

The landlord submits that due to a catastrophic data failure with their computer system and that the recovery took several days and that as a result the only one available to deal with the systems support was the also the only one who was able to deal with the matter in the landlord's Application for Dispute Resolution.

The landlord has provided a letter from the systems support company that worked with the landlord to restore the systems confirming the work was being completed between September 18 and September 20, 2012.

From these submissions, I find the landlord was unable to attend the hearing due to unanticipated circumstances beyond the landlord's control.

Decision

For the reasons noted above, I find the landlord has established sufficient grounds for a new hearing on these matters. Details of the new hearing are included with the landlord's copy of this decision. The landlord **must serve the tenants within 3 days** of receiving this decision with a copy of this decision and the Notice of Hearing documents.

The decision made on September 19, 2012 is suspended until such time as the new hearing has been completed and a decision is given to the parties, in accordance with Section 81(3).

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: September 28, 2012.

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Residential Tenancy Branch