



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNDC MNSD

Introduction

This is an application by the landlord to review the decision dated July 19, 2013. The tenant's application for double the portion of the security deposit against the Landlord was successful. The Dispute Resolution Officer found that the landlord had not complied with the Act because the landlord kept the security deposit without making an application for damages within the required 15 days to obtain a monetary order to keep the deposit.

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.
4. (My emphasis)

The landlord requested review consideration on the basis that there is new and relevant evidence that was not available at the time that the original hearing was held, on July 19, 2013.

Issue(s) to be Decided

Is there new evidence that did not exist or could not be obtained prior to or at the hearing held on July 19, 2013 that would be found to be relevant in determining the outcome of the hearing?

Background and Evidence

The landlord submitted into evidence an application requesting review consideration and a copy of money order from the bank dated May 2, 2013 with the tenant's name as recipient.

The above evidence was duly considered in this review consideration.

Issues dealt with at the original hearing included the tenant's request for compensation for damages and a request for a refund of double the tenant's security deposit under section 38 of the Act. The tenant was successful in the request for double the security deposit and the remainder of the tenant's claim for damages was dismissed,

In the application for Review Consideration, the landlord stated that:

*"I provided this evidence at the time of the hearing but it was considered irrelevant at that time. As the decision and order are now based on this information I feel it is very relevant and needs further consideration. It is now required that I pay double the damage deposit when I do not feel that it is my obligation considering *I already made an attempt to return the deposit on time."*

The landlord commented that certain information, " was not deemed important at the time as stated by the reviewing officer but clearly is crucial information to be considered since it is reflective upon the decision".

The landlord listed breaches perpetrated by the tenant and detailed her attempts to refund the security deposit to the tenant. The landlord pointed out that,

"a copy of the money order was included in the original documentation and was available to the reviewing officer at the time of the interview. When this was mentioned in the telephone interview I was told that it was not relevant. Therefore I do not feel he should receive any damage deposit let alone double."

Analysis

The burden of proof is on the Applicant to prove that a review-hearing is justified.

In regard to new and relevant evidence, the applicant must prove that he or she has evidence that was not available at the time of the original arbitration hearing and could not be obtained through due diligence prior to the proceedings. Only when the applicant has evidence which meets the above criteria, will a review be granted on this ground.

It is the responsibility of the participant to prepare for an arbitration hearing as fully as possible. Parties should collect and supply all relevant evidence to the arbitration hearing. Evidence which was in existence at the time of the original hearing, and which was not presented by the party, will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through reasonable steps, have become aware of the evidence.

In this situation, the landlord provided information that was already available prior to the hearing. I find the existence of the landlord's money order was acknowledged by the arbitrator in the last paragraph of page two of the hearing decision. I find it clear that this matter was duly considered by the arbitrator in making the decision.

Therefore, I find that the evidence brought forth by the landlord in this application for review consideration cannot be considered as "new evidence".

In regard to the information provided by the landlord about the landlord's damages or losses caused by the tenant, I find it would not be relevant to the issues determined at the original hearing.

The hearing on July 19, 2013 was held on the *tenant's* application. I find that any damage claims put forth by a landlord would require the landlord to make their own application for dispute resolution requesting monetary compensation under section 67 of the Act. This course of action is still open to the landlord to pursue.

I find that the landlord attended the hearing and actively participated in the proceedings and likely did present the landlord's testimony about the course of events respecting the end of the tenancy. I find that the landlord's testimony and evidence was taken into consideration before the decision was made. A review consideration is not an opportunity to re-argue matters that were already brought forth during the hearing.

Given the above, I find that the evidence submitted by the landlord in support of this review consideration application to be neither new nor relevant to matters considered at the hearing in regards to the tenant's application for double the security deposit under *section 38* of the Act.

Section 81(1) of the Act states that the director may dismiss or refuse to consider the application, if the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely, if the application does not disclose sufficient evidence of a ground for the review, if the application 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 if the application is frivolous or an abuse of process.

Pursuant to Section 81(b) (ii) of the Residential Tenancy Act, I must dismiss the application for review on the basis that it does not disclose sufficient ground for a review. The Applicant has not succeeded in demonstrating that the evidence contained in this Application would meet the criteria for granting a review under the ground cited. There is no basis to claim that new and relevant evidence exists and I hereby dismiss this application without leave.

Accordingly, I reject the ground for review being put forward by the landlord in support of a rehearing and the Dispute Resolution decision of July 19, 2013 stands.

CONCLUSION

The landlord is not successful in the application for review consideration and it is therefore dismissed. The July 19, 2013 decision and order remain in force.

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 28, 2013

Residential Tenancy Branch