



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD

Introduction

This Application was filed by the tenant on September 13, 2013, seeking a Review Consideration of the Decision dated August 01, 2013 and received on her door step on September 11, 2013. The Decision granted the tenant a monetary order to the tenant in the amount of \$1,177.00.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of a 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 tenant has applied on the first ground.

Issue

- Has the landlord provided sufficient evidence that she was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond her control?

Facts and Analysis

The Application contains information under section C1, on why the landlord could not attend the original hearing held on August 01, 2013.

The landlord writes in her Application:

“I WAS NEVER INFORMED OF THIS SAID MEETING THEREFORE I WAS UNABLE TO ATTEND, I WAS OUT OF TOWN ON A FAMILY MATTER WHEN I RETURNED THIS IS WHEN I FOUND THE OREDER ON MY DOOR STEP”

[Reproduced as written]

The landlord writes in her Application regarding what testimony or additional evidence would you have provided if you were at the hearing:

“HER EVICTION NOTICE, OVER DUE HYDRO BILL (AS SHE CUT HYDRO WHILE STILL LIVING IN THE HOUSE & WRITE & AGREEMENT THAT SHE WOULD PAY THE BILL & DIDN'T I WOULD HAVE PROVIDED END OF TENANCY AGREEMENT AND ALL OTHER BILL FOR CLEANING, PAINTING FILLING ALL HOLES FROM HANGING ITEMS ON WALLS, LAWNCARE, & HOT TUB WIRE OUT.”

[Reproduced as written]

The landlord submitted nine pages in evidence including a letter dated August 22, 2013, a Mutual Agreement to End a Tenancy, an undated note signed by the landlord, three pages of invoices from a painting company, a page including two photocopied receipts, and a two-page document indicating cleaning completed.

In the Decision dated August 01, 2013, the Arbitrator found that the landlord was sufficiently served by registered mail on June 28, 2013 and that under the *Act* the landlord was deemed served five days later.

Decision

Based on the above, the Application submitted, and on a balance of probabilities, I find the following.

The landlord writes in her application that she was “out of town on a family matter”, however, failed to submit any evidence to support that she was “out of town on a family matter”, such a witness statement, or other documents in support of her Review Application. In addition, the Arbitrator made a finding that the landlord was sufficiently served by registered mail on June 28, 2013 and that the landlord was deemed served five days later. I note that refusal or neglect to accept registered mail does not constitute grounds for a Review. Based on the above, I find the landlord has provided insufficient evidence to support that she was unable to attend the original hearing because of

circumstances that could not be anticipated and were beyond her control. As a result, I **dismiss** the landlord's Review Application due to insufficient evidence.

In addition, the tenant's application was for double her security deposit, of which the landlord does not dispute that there was a written agreement between the parties that the landlord could retain \$161.50 of the security deposit as noted in the Decision dated August 01, 2013. It is clear from the Decision dated August 01, 2013, that the tenant's security deposit was doubled in accordance with section 38 of the *Act* and that none of the information described by the landlord above would have changed the Decision.

Section 81 of the *Act* states:

81 (1) At any time after an application for review of a decision or order of the director is made, the director may dismiss or refuse to consider the application for one or more of the following reasons:

(a) the issue raised by the application can be dealt with by a correction, clarification or otherwise under section 78 *[correction or clarification of decisions or orders]*;

(b) the application

(i) does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely,

(ii) does not disclose sufficient evidence of a ground for the review,

(iii) 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

(iv) is frivolous or an abuse of process;

[emphasis added]

Pursuant to section 81(1)(b)(iii) described above, I find that the landlord's 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 as the landlord has provided no evidence that she submitted an application for dispute resolution claiming for damages or monetary compensation under the *Act*, regulation or tenancy agreement.

As I have dismissed the tenant's Review Application, the Decision and Monetary Order dated August 01, 2013 stands and remains in full force and effect.

I note that the landlord describes a claim for damages and/or monetary compensation under the *Act*, regulation or tenancy agreement, which the landlord is at liberty to apply for under the *Act* up to two years after the end of the tenancy.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 19, 2013

Residential Tenancy Branch