



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend the hearing, which lasted approximately 38 minutes. The landlord and her daughter agent, AYCC attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

### Preliminary Issue - Previous Hearings and Service of Documents

This matter was previously heard by a different Arbitrator on October 12, 2016 and a decision was issued on the same date ("previous hearing" and "previous decision"). The landlord did not attend the previous hearing, only the tenant did. The previous decision granted the tenant a monetary order.

The landlord applied for a review of the previous decision and a new review hearing (this current hearing on February 8, 2017) was granted by a different Arbitrator, pursuant to a "review consideration decision," dated January 12, 2017.

By way of the review consideration decision, the landlord was required to serve the tenant with a copy of the review consideration decision, the notice of review hearing and the any additional evidence that she submitted with her review application if she intended to rely upon it at this new review hearing.

The landlord's agent testified that the tenant was served with the notice of review hearing, dated January 12, 2017, on January 26, 2017 by registered mail. She provided a Canada Post tracking number verbally during the hearing. The landlord's agent claimed that she mailed the notice of review hearing within three days of receiving it when she returned from a trip out of town from January 12 to 25, 2017. She said that the landlord was still in town during the time that she was away, but the landlord does not know English, so she was unable to serve the above documents to the tenant without the assistance of her agent.

The landlord's agent stated that she did not know whether the review consideration decision was served upon the tenant. She claimed that the Residential Tenancy Branch ("RTB") put together the package that she picked up and then mailed to the tenant. She said that she only saw the cover page of the package, which was the notice of review hearing. She explained that she did not check the other pages in the package but assumed that the review consideration decision was in the documents that were mailed to the tenant. She maintained that she did not serve the tenant with the landlord's additional written and photographic evidence package because she did not know that she was required to do so.

Accordingly, I find that the tenant was not properly served, as per section 89 of the *Act*, with the review consideration decision or the additional written and photographic evidence, as required. The tenant did not appear at this hearing. The review consideration decision stated clearly that the above documents were required to be served by the landlord to the tenant. At the hearing, the landlord could not definitively confirm that the review consideration decision was in the package of documents mailed to the tenant. The landlord maintained that the written evidence was not served to the tenant, either. I find that the tenant did not have proper notice that the landlord was granted a new review hearing after the previous decision was made, as he did not receive the review consideration decision, even if he is deemed served with the notice of review hearing.

Section 82(3) of the *Act* states:

*Following the review, the director may confirm, vary or set aside the original decision or order.*

During the hearing, I informed the landlord and her agent that I could not proceed with the hearing because the tenant had not been served with the required review hearing documents. I notified the landlord and her agent that the previous decision was confirmed.

I confirm the previous decision and monetary order, both dated October 12, 2016.

I caution the landlord to review section 79(7) of the *Act*, which states that a party may only apply once for a review consideration:

*(7) A party to a dispute resolution proceeding may make an application under this section only once in respect of the proceedings.*

### Conclusion

The previous decision and monetary order, both dated October 12, 2016, are 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: February 09, 2017

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Residential Tenancy Branch