Special Instructions

File No: 110014765

Fax the ☐ Applicant ☐ Respondent ☐ decision ☐ MN ☐ OP
Party: Click here to enter text.

Fax #: Click here to enter text.

The following party will PICK UP the decision at Choose an item.

I have told the party that the decision will be available by Click here to enter a date.

☐ There are multiple ☐ Applicants ☐ Respondents

Send all ☐ Applicants ☐ Respondents copies of the ☐ decision ☐ MN ☐ OP
to the following who will distribute the documents:

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to their individual addresses listed in CMS.

☐ Other: Click here to enter text.

Outcome Information

Decision Details: *(Landlord, Tenant, Split, Dismissed, Dismissed with Leave, Cancelled/withdrawn, Jurisdiction Refused, Settled Other)* Click here to enter text.
Decision Issue Date: Click here to enter text. **Staff Code:** Click here to enter text.
Hearing Duration: Click here to enter text. **Method: (Med, Adj, Both, N/A):** Click here to enter text.
Act/Sections: *(RTA/MHPTA)* Click here to enter text.
Writing Time (Min): Click here to enter text.

$ Amount Requested: Click here to enter text. **$ Fee Payment Ordered (Y/N):** Click here to enter text.
$ Amount Awarded: Click here to enter text.

Section Dispute Codes: Click here to enter text.
Order of Possession (granted/denied): Click here to enter text.
Order Effective (Days from service): Click here to enter text.
Order Date: Click here to enter text.

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 110014765

In the matter of the *Residential Tenancy Act,* SBC 2002, c. 78, as amended

Between

s.22 **Tenant(s),**

Applicant(s)

And

CCPR PARK INVESTMENTS LTD. PARTNERSHIP,
Landlord(s),

Respondent(s)

Regarding a rental unit at: s.22 -917 AVRIL ROAD, VICTORIA, BC

Date of Hearing:	December 17, 2020, by conference call.
Date of Reconvened Hearing:	April 26, 2021
Date of Interim Decision:	January 24, 2021
Date of Decision:	April 26, 2021

Attending on December 17, 2020:

For the Landlord:	NICHOL VAARTNOW, Legal Counsel NICOLE MANN, Agent for the Landlord
For the Tenant:	s.22 , Tenant

Attending on April 26, 2021:

For the Landlord:	Nobody
For the Tenant:	s.22 Tenant

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CBRE PARK INVESTMENTS LIMITED PARTNERSHIP, CBRE PARK RESIDENCE GP INC. and [illegible]

DECISION

Dispute Codes:

MNSD, MNDCT, FFT

Introduction:

A hearing was convened on December 17, 2020 in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

For reasons outlined in my interim decision of January 24, 2021, the hearing was reconvened on April 26, 2021 to consider the merits of the Application for Dispute Resolution.

Service of documents was address in my interim decision of January 24, 2021 and will not be restated here.

As outlined in my interim decision of January 24, 2021, the parties were expected to attend the reconvened hearing in accordance to the hearing notice provided to each party by the Residential Tenancy Branch. Neither party was required to provide notice of the reconvened hearing to the other party.

The hearing on April 26, 2021 commenced at the scheduled start time of 11:00 a.m., in the absence of the Landlord. By the time the teleconference was terminated at 11:15 a.m., the Landlord had not attended.

The Agent for the Tenant who was present at the hearing on April 26, 2021 was given the opportunity to present relevant oral evidence and to make relevant submissions in regard to the issue of jurisdiction. She affirmed that she would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant (with the exception of legal counsel) affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Agent for the Tenant was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. At the hearing on April 26, 2021, the Agent for the Tenant affirmed she would not record any portion of these proceedings.

Preliminary Matter:

For reasons outlined in my interim decision of January 24, 2021, I have concluded that I have jurisdiction over this tenancy.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?
Is the Tenant entitled to a rent refund?

Background and Evidence:

At the hearing on April 26, 2021 the Agent for the Tenant stated that:

- The Tenant is s.22 ;
- The tenancy began in 2017;
- The tenancy ended on June 30, 2020;
- The rent at the start of the tenancy was $3,100.00;
- The Tenant paid a security deposit of $1,550.00;
- The Tenant paid a $175.00 deposit for an “alarm bracelet”;
- A condition inspection report was not completed at the start of the tenancy;
- A final condition inspection report was completed on July 09, 2020;
- She provided the Landlord with a forwarding address for the Tenant, in writing, on July 09, 2020;
- The Landlord did not file an Application for Dispute Resolution in which the Landlord applied to retain any portion of the Tenant’s security deposit;
- On August 18, 2020 the Landlord provided her with a cheque, in the amount of $1,176.90;
- The $1,176.90 was a security deposit and alarm bracelet deposit refund, less $250.00 for a sanitation fee, $52.00 for repairing damage from a curtain rod, $140.00 for suite cleaning, $80.00 for carpet cleaning, and $26.10 for GST;
- The Tenant did not give the Landlord written permission to retain any portion of the security deposit;

- She told the Landlord she would pay for cleaning the suite, and she agrees that the Landlord can retain $140.00 from the security deposit for cleaning the unit;
- She is seeking the return of double the security deposit because the Landlord did not comply with section 38 of the *Residential Tenancy Act (Act)*;
- On January 01, 2020 the Landlord increased the rent from $3,100.00 to $3,193.00;
- The rent increase imposed on January 01, 2020 is a 3% increase, which is greater than that 2.6% increase that was permitted at the time of the increase;
- The Tenant paid the rent increase for the period between January 01, 2020 and June 30, 2020; and
- The Tenant is seeking to recover the difference between the 3% increase imposed and the 2.6% allowable increase, which is a total of $74.40.

Analysis:

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the full security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received, in writing.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenant double the security deposit, which is $3,100.00.

On the basis of the undisputed evidence, I find that the Landlord returned $1,176.90 to the Tenant on August 18, 2020. I find that this was a refund of $175.00 for the “alarm bracelet” deposit and the remaining $1,001.90 was a partial security deposit refund.

On the basis of the testimony of the Agent for the Tenant, I find that the Tenant has agreed to permit the Landlord to deduct $140.00 from the security deposit for cleaning the rental unit.

Section 43(1)(a) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is calculated in accordance with the regulations. The allowable rent increase for January of 2020 was 2.6%.

On the basis of the undisputed evidence, I find that on January 01, 2020 the Landlord increased the rent from $3,100.00 to $3,193.00, which is an increase of 3%. As the Landlord did not have the right to impose a rent increase of 3% on January 01, 2020, pursuant to section 43(1)(a) of the *Act,* I find that the Landlord did not have the right to increase the rent by $93.00 pursuant to that section.

Section 43(1)(b) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that has been ordered by the director on an application under section 43(3) of the *Act*. As I have no evidence that the Landlord has made an application under section 43(3) of the *Act,* I find that the Landlord did not have authority to increase the rent on January 01, 2020, pursuant to section 43(1)(b).

Section 43(1)(c) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is agreed to by the tenant in writing. As I have no evidence that the Tenant agreed to increase the rent on January 01, 2020, in writing, I find that the Landlord did not have authority to increase the rent pursuant to section 43(1)(c).

Section 43(5) of the *Act* stipulates that if a landlord collects a rent increase that does not comply with the legislation, the tenant may deduct the increase from rent or otherwise recover the increase.

As the Landlord collected an unauthorized monthly rent increase of $93.00 for the first six months of 2020, I find that the Tenant has the right to recover the entire amount of those rent increases, which is $558.00. Although the Tenant has not applied to recover the full amount of the rent increase, she is entitled to recover the full amount, pursuant to section 43(5) of the *Act.*

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of $3,758.00, which includes double the security deposit ($3,100.00), $558.00 for a rent increase that does not comply with the legislation, and $100.00 as compensation for the cost of filing this Application for

Dispute Resolution. This award must be reduced by the $1,001.90 security deposit refund that was provided to the Tenant on August 18, 2020. The award is further reduced by $140.00, as the Agent for the Tenant has agreed that amount is due to the Landlord for cleaning.

On the basis of these calculations, I grant the Tenant a monetary Order for $2616.10. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: April 26, 2021

s.15

s.15 Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Special Instructions

File No: 110022192

PLEASE SEND THE DECISION TO BOTH PARTIES, BUT THE ORDER TO THE TENANT ONLY, AS FOLLOWS:

Landlord: mfleming@cherishliving.ca

Tenant: s.22

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 110022192

In the matter of the *Residential Tenancy Act,* SBC 2002, c. 78, as amended

Between

s.22 **, Tenant(s),**

Applicant(s)

And

CCPR PARK INVESTMENTS LIMITED PARTNERSHIP by its general partner CCPR PARK RESIDENCE GP LTD.
Landlord(s),

Respondent(s)

Regarding a rental unit at: s.22 - 917 Avrill Road, Victoria, BC

Date of Hearing: March 29, 2021, by conference call.

Date of Decision: April 26, 2021

Attending:

For the Landlord: No one attended

For the Tenant: s.22 Agent

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order for the return of her security and pet damage deposits that the Landlord is holding without cause; and to recover the $100.00 cost of her Application filing fee.

An agent for the Tenant, s.22 ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about the hearing process. During the hearing the Agent was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that the Tenant served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on December 16, 202. The Agent provided a Canada Post tracking number as evidence of service. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I,

therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Landlord.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and the Agent confirmed these addresses in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider the Tenant's written or documentary evidence to which the Agent pointed or directed me in the hearing.

During the initial administrative matters of the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent confirmed the corporate name of the Landlord from the tenancy agreement; therefore, I amended the Respondent's name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the $100.00 Application filing fee?

Background and Evidence

The tenancy agreement indicates that the periodic tenancy began on February 1, 2020, with a monthly rent of $4,295.00, due on the first day of each month. The tenancy agreement states that the Tenant paid the Landlord a security deposit of $2,147.50 and a pet damage deposit of $1,000.00. The Agent said that the Tenant moved out of the residential property on October 30, 2020. The Agent said that the Tenant gave the Landlord her forwarding address in writing to an employee, N.M., during the move-out inspection on October 30, 2020.

In the hearing, the Agent explained the Tenant's claim:

> Basically, we want a return of her deposits paid, because there was no indication given of any right of the Landlord to keep those funds. I had a call from

> Landlord's staff saying that they had a cheque for part of the deposit. They sent it, but that's the extent of the interaction. Usually, they'd send a breakdown of its make up of, but not here. It is for $1,145.40 and is dated February 15, 2021.

The Agent said that there was a lot of background with the Landlord in this tenancy. I note this is $2,002.10 less than the Tenant paid the Landlord in security and pet damage deposits. The Agent said:

> s.22 but I said no, we'll be going through the proper process. There was no communications about the deposit. When I followed up, they said they needed to have the carpet replaced, and would let me know when they had a quote. That was two weeks after her move-out date. We did apply for double the amount.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I find that the Tenant provided the Landlord with her written forwarding address on October 30, 2020, and the tenancy ended on October 30, 2020. Section 38(1) of the Act states the following about the connection of these two dates:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord was required to return the $2,147.50 security deposit and the $1,000.00 pet damage deposit within fifteen days after October 30, 2020, namely by November 14,

2020, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Tenant provided evidence that the Landlord returned part of the deposits in the amount of $1,145.40. Further, there is no evidence before me that the Landlord applied to the RTB to claim against the deposits. Therefore, I find the Landlord failed to comply with their obligations under section 38(1).

Section 38(4) sets out the conditions under which a landlord may retain part or all of a tenant's security and/or pet damage deposits:

> **38** (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
>
> (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
>
> (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

The Landlord failed to comply with the requirements of section 38(1), and there is no evidence before me that the conditions under section 38(4) have been met. Further, and pursuant to section 38(6)(b) of the Act, I find the Landlord must pay the Tenant double the amount of the deposits, less the amount paid. There is no interest payable on the security deposit.

> **38** (6) If a landlord does not comply with subsection (1), the landlord
>
> (a) may not make a claim against the security deposit or any pet damage deposit, and
>
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

DEPOSIT TYPE	AMOUNT
Security deposit	$2,147.50
Pet damage deposit	$1,000.00
Double deposits	$6,295.00
Less amount returned	($1,145.40)
Amount Awarded	**$5,149.60**

The security deposit is $2,147.50 plus the $1,000.00 pet damage deposit, doubled equals $6,295.00, less the $1,145.40 returned to the Tenant by the Landlord equals $5,149.60.

Based on the testimony and evidentiary submissions, and pursuant to sections 38 and 67 of the Act, I award the Tenant $5,149.60 from the Landlord in recovery of double the security and pet damage deposits owing. Given the Tenant's successful Application, I also award her recovery of the $100.00 Application filing fee for a Monetary Order of **$5,249.60**.

Conclusion

The Tenant's claim against the Landlord for return of double the security and pet damage deposits is successful in the amount of $5,149.60. The Landlord did not return the Tenant's full security and pet damage deposits, nor apply for dispute resolution within 15 days of the later of the end of the tenancy and the Landlord receiving the Tenant's forwarding address. I award the Tenant with double the amount of the unpaid security and pet damage deposits, plus recovery of her $100.00 Application filing fee.

I grant the Tenant a monetary order under section 67 of the Act from the Landlord in the amount of **$5,249.60.**

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: April 26, 2021

s.15

s.15 Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 110008579

In the matter of the *Residential Tenancy Act,* SBC 2002, c. 78, as amended

Between

s.22 **Tenant,**

Applicant

And

Cherish at Central Park, Landlord,

Respondent

Regarding a rental unit at: s.22 917 Avrill Road, Victoria, BC

Hearing:	October 23, 2020, by conference call.
Request for clarification of:	November 03, 2020 decision
Date of clarification request:	November 25, 2021
Date of clarification request decision:	December 03, 2021
Clarification request from:	s.22 (tenant)

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION ON REQUEST FOR CORRECTION

The tenant requested a correction to my decision and monetary order dated November 03, 2020.

Section 78 of *Residential Tenancy Act* (the Act) enables me to correct typographic, grammatical, arithmetic or other similar errors in a decision or order or deal with an obvious error or inadvertent omission in a decision or order.

Section 78(1.1)(b) states the request for correction must be made within 15 days after the decision or order is received. The tenant received the decision on November 03, 2020 and made the request for correction on November 25, 2021. The tenant's request was submitted after the timeframe of section 78(1.1)(b).

The tenant requested a correction to change the landlord to "CCPR Park Residence GP Ltd. and CCPR Pak Investments Limited Partnership". The tenant submitted the application against respondent Cherish at Central Park. I find the tenant is not requesting to correct a typographical error or to deal with an obvious error, but to substantially alter the decision by naming two different landlords.

Pursuant to section 78(3) of the Act, I do not consider it just and reasonable to correct the decision because the remedy the applicant is seeking goes beyond the scope of a correction pursuant to section 78(1) of the Act.

Thus, I deny the request for correction.

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: December 03, 2021

s.15

s.15 Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 110014765

In the matter of the *Residential Tenancy Act,* SBC 2002, c. 78, as amended

Between

s.22 **Tenant**
Applicant/Respondent on Review Application

And

CCPR Park Investments Ltd. Partnership, Landlord
Respondent/Applicant on Review Application

Regarding a rental unit at: s.22 2978 Glen Drive, Coquitlam, V3B 0C3, BC

Date of Review Consideration Decision: May 2, 2022

Date of Original Decision: April 26, 2021

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes MNSD, MNDCT, FFT

Basis for Review Consideration

On April 28, 2022 the Landlord (hereinafter the "Review Applicant") completed the Application for Review Consideration because of a decision and order(s) issued on April 26, 2021.

The *Residential Tenancy Act* (the "*Act*") s. 79 provides only 3 grounds on which a party may request that a decision or order be reviewed:

(1) A party to a dispute resolution proceeding may apply to the director for a review of the director's decision or order.

(2) A decision or an order of the director may be reviewed only on one or more of the following grounds:

(a) a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control;

(b) a party has new and relevant evidence that was not available at the time of the original hearing;

(c) a party has evidence that the director's decision or order was obtained by fraud . . .

The Review Applicant requests that the decision be reviewed on the first and second grounds outlined above.

The *Act* s. 80 stipulates that a party must make the application within:

- 2 days after a copy of the decision or order is received by the party, if the decision or order relates to an early end of tenancy; an order of possession for a landlord or tenant; unreasonable withholding of consent by a landlord regarding assignment or subletting; or a landlord's notice to end tenancy for non-payment of rent;
- 5 days after a copy of the decision or order is received by the party, if the decision or order relates to a notice to end tenancy for any other reason; repairs or maintenance; or services or facilities; or
- 15 days after a copy of the decision or order is received by the party, if the decision relates to any other part of the *Act*.

In the decision of April 26, 2021, the issues before the original arbitrator were related to the return of the original security deposit, the Tenant's request for compensation, and their filing fee. I find the original decision allowed the Review Applicant 15 days to file their Application for Review Consideration. Because they completed on April 28, 2022, I find they did not complete this Application for Review Consideration within the required timeline.

The *Act* s. 81 establishes that an Arbitrator may dismiss or refuse to consider an Application for one or more of the following reasons:

- it does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- it does not disclose sufficient evidence of a ground for review;
- it discloses no basis on which, even if the submission in the application were accepted, the decision or order of the arbitrator should be set aside or varied; or
- it fails to pursue the application diligently or does not follow an order made in the course of the review.

Request for an Extension of Time to File the Application for Review Consideration

The Review Applicant is requesting an extension of time to make this Application for Review Consideration. In response to the request to "State why you were not able to apply for review within the required time lime and LIST and ATTACH evidence. . .", the Review Applicant stated:

- the hearing was held on December 17, 2020, in which the Arbitrator determined whether jurisdiction to hear the matter was granted to the Tenant;
- the subsequent decision stated the Residential Tenancy Branch does have jurisdiction
- the next hearing was scheduled for April 26, 2021; the Review Applicant was not able to attend because their business was restricted under public health guidelines then in place
- they "never received details from RTB regarding the hearing of that date, or how the breakdown of the monetary order was determined."

Findings on Request for Extension of Time

The *Act* s. 66 of the *Act* provides that an arbitrator may extend or modify a time limit established by these Acts only in **exceptional circumstances**.

Residential Tenancy Policy Guideline 36 provides information to determine what qualifies as exceptional circumstances:

Exceptional Circumstances
The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward the said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- *the party who applied late for arbitration was not feeling well*
- *the party did not know the applicable law or procedure*
- *the party was not paying attention to the correct procedure*
- *the party changed his or her mind about filing an application for arbitration*
- *the party relied on incorrect information from a friend or relative*

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- *the party was in the hospital at all material times*

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- *the party did not willfully fail to comply with the relevant time limit*
- *the party had a bona fide intent to comply with the relevant time limit*
- *reasonable and appropriate steps were taken to comply with the relevant time limit*
- *the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party*
- *the party has filed an application which indicates there is merit to the claim*
- *the party has brought the application as soon as practical under the circumstances*

I find the Review Applicant's statement does not meet any criteria set out in the *Act* that would allow me to extend the time limit for the Review Consideration Application. They bring this Application one year after the original decision of April 26, 2021, noting they received that decision on April 30, 2021.

Though they stated they "never received details from RTB regarding the hearing of that

date, or how the breakdown of the monetary order was determined", I find the Residential Tenancy Branch sent the decision to them. That decision dated April 26, 2021 provides the Arbitrator's rationale for making the monetary order that they did. I find the Review Applicant here is stating they did not apply for Review Consideration because they never received a copy of that decision; however, they did receive the decision.

I therefore dismiss the Review Applicant's request for late filing of their Review Consideration Application. With this request dismissed, I make no consideration of the Review Applicant's request concerning their inability to attend the reconvened hearing, nor new and relevant evidence they state was not available at the time of the hearing.

Conclusion

I dismiss the Application for Review Consideration. I confirm the decision issued on April 26, 2021.

This review consideration decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 2, 2022

s.15

s.15 , Arbitrator
Residential Tenancy Branch