



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNR FF

Introduction

On September 30, 2011 a Dispute Resolution Officer (DRO) provided a decision on cross Applications for Dispute Resolution. The tenant sought to cancel a notice to end tenancy and the landlord sought an order of possession and a monetary order for unpaid rent and to retain a portion of the security deposit.

That decision notes the landlord withdrew their Application for the order of possession and to retain a portion of the security deposit. The DRO granted the landlord a monetary order in the amount of \$646.00. The tenant's Application was granted, cancelling the notice to end tenancy.

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 tenants sought a review on the ground that they have new and relevant evidence that was not available at the time of the hearing.

Issues

The issue to be decided is whether the tenants are entitled to have the decision of September 30, 2011 set aside and a new hearing granted because they have provided sufficient evidence that they have new and relevant evidence that did not exist at the time of the hearing.

In addition, while the tenants did not specifically apply under all three grounds they have completed details under each of the three possible grounds for a review as outlined above and as such I have also considered whether the tenants have provided sufficient evidence that they were unavailable at the time due to circumstances beyond their control and that the landlords obtained the decision and order by fraud.

Facts and Analysis

The tenants submit that they did not attend the third hearing date because they thought they had settled the dispute with the landlord and the landlord informed them there was no need to attend the final hearing scheduled. The tenants provided no evidence to support this claim. I find the tenants have failed to establish they were unable to attend the hearing due to circumstances beyond their control.

Despite the question on the Application for Review Consideration form that requires the applicant to list each item of new and relevant evidence and state; why it was not available at the time of the hearing; and how it is relevant, the tenants provided no information outlining this information.

While the tenants did submit additional evidence in their Application for Review Consideration the majority of this evidence were either video and/or voice recordings or written documents that were dated prior to the July 28, 2011 hearing or after the September 23, 2011 hearing.

As such, without explanation as to why this evidence was not available at the time of the original hearing, I find the tenants have failed to establish they have any new or relevant evidence.

In relation to a claim of fraud, the tenants rely upon the evidence that was submitted to the original hearing and to the additional evidence that was submitted in his Application for Review Consideration and provided no evidence to substantiate their claim the landlord committed fraud.

I do accept that had the tenants provided some of the additional evidence a different outcome *may* have been determined, however, the submission of additional evidence that could have been provided during the original hearings does not, in itself, warrant a new hearing or setting aside the decision. As noted above, the tenants have provided no evidence to establish any of the three grounds to grant a new hearing.

Decision

For the reasons noted above, I dismiss the landlords' Application for Review Consideration in its entirety. The decision made on September 30, 2011 stands.

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: October 28, 2011.

Residential Tenancy Branch