



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CC OLC

Introduction

On December 29, 2011 Dispute Resolution Officer (DRO) XXXXXX provided a decision on the tenant's Application for Dispute Resolution seeking to cancel a Notice to End Tenancy for Cause. The hearing had been conducted on December 21, 2011.

That decision dismissed the tenant's Application and found the Notice to be in full force and effect. The tenant submits she received a copy of the decision and order on January 3, 2012.

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 tenant submits in her Application for Review Consideration that the landlord obtained the decision by fraud.

Issues

The issue to be decided is whether the tenant is entitled to have the decision of December 29, 2011 set aside or varied and a new hearing granted because she has provided sufficient evidence that the original decision was obtained by fraud.

Facts and Analysis

The tenant submits that a specific passage in the landlord's written submission contained fraudulent statements in an attempt to deceive and mislead DRO XXXXXX into believing the tenant was a person of "low character" and that she had misrepresented herself which damaged her credibility.

The tenant asserts the specific information that was fraudulent were statements the landlord providing regarding the tenant's employment history. The submission of the landlord was in general terms and provided vague references to timeframes, such as "By the time November of 2009 (7 months later)...and got dismissed 7 months later...she then went on to EI...she got 2 casual positions at 2 different places, but turned down shifts at both of them....they both took her off the casual pool."

The tenant submits the landlord was fully aware of the specifics of her employment history as she is required to submit employment information any time it changes as her rent is subsidized based on income.

The tenancy began on April 17, 2009. The tenant submits she had been hired in July 2009 and that she was wrongfully dismissed on February 7, 2010; that she applied for EI shortly after this and was denied; that she was later hired for one casual pool on March 11, 2010 and removed from that list in December 29, 2010, because she had not accepted shifts with them; that in the mean time she had been added to another casual pool and remains active on that pool.

I accept the tenant's assertion that the landlord's intention was clearly to demonstrate the landlord's belief about the tenant's character as noted in the paragraph following the landlord's statements on her employment that says: "The reason I mention the above information is due to the fact...we feel E misrepresented herself...which goes to showing a bit of her character."

While I accept that there is a difference in the specific details of each party's version of the tenant's employment history, I find these differences to be minor and inconclusive to the tenant's assertion that the statements are fraudulent. Inaccuracies in a statement do not automatically make the statement fraudulent.

In the case before me, I find that only the details of the landlord's assertions are inaccurate and yet despite this, the basic content of the landlord's description of the tenant's employment history differs only slightly from the tenant's version. As such, I find the tenant has failed to establish the landlord obtained the decision based on fraud.

Further, I find the detail of the inaccurate period of time; whether or not the tenant was entitled to EI; and whether the tenant was released from one or two casual pools, provide very little information, if any on a person's character.

Section 81 of the *Act* states an Application for Review may be dismissed if the application discloses no basis on which, even if the submissions in the application were accepted, the decision or order should be set aside or varied.

DRO XXXXXX found the audio tape played by the landlord recording the tenant's aggressive behaviour to be indicative of the behaviour that provided the landlord with cause to end the tenancy and that the landlord had provided written statements

providing additional corroborating evidence of the tenant's behaviour that gave the landlord cause to end the tenancy.

I find that in the decision DRO XXXXX at no time refers to considering the landlord's evidence regarding the tenant's employment and in fact is quite specific in her analysis as to why she favoured the landlord's position. As such, the tenant has failed to show that the statements had any impact on the decision at all.

Decision

For the reasons noted above, I dismiss the tenants' Application for Review Consideration.

The decision made on December 29, 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: January 12, 2012.

Residential Tenancy Branch