



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC

Introduction

This is an application by the Tenant for a review of a Decision rendered by a Dispute Resolution Officer (DRO) on January 17, 2012 with respect to an application for dispute resolution filed by the Tenant.

Issues

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 applied for a review on the third ground.

Facts and Analysis

The Tenant applied for compensation of \$25,000.00 for the Landlord allegedly ending the tenancy early and for enduring stress due to the actions of another person in the rental property. The Landlord argued that the Tenant was not a party to the tenancy agreement. The Tenant admitted that he sublet from another person who was a party to the tenancy agreement and that this person moved out on August 31, 2011. However the Tenant argued that the Landlord entered into a new tenancy with him by accepting his rent payment for September 2011. The Landlord denied that the Tenant made a rent payment for September 2011. Given the contradictory evidence of the Parties, the Dispute Resolution Officer found that the Tenant had not met the burden of proof on him to show that he was a party to the tenancy agreement and therefore found

that the Tenant had no standing to bring his application. The Dispute Resolution Officer also found that despite the issue of standing, the Tenant had also failed to provide sufficient evidence to make out a monetary claim for \$25,000.00.

RTB Policy Guideline #24 says at p. 3 that in order to succeed on an application for review on the ground of fraud,

“the application for review consideration must be accompanied by sufficient evidence to show that false evidence on a material matter was provided to the RTB, and that this evidence was a significant factor in the making of the decision. The Application package must clearly show the newly discovered and material facts were not known to the applicant at the time of the hearing, and were not before the RTB. The Application package must contain sufficient information for the person conducting the review to reasonably conclude that the new evidence, standing alone and unexplained, supports the allegation that the decision or order was obtained by fraud.”

On his application for Review, the Tenant claimed that the Landlord gave fraudulent evidence that he did not pay rent for September 2011 and claimed that he now has evidence in the form of a bank statement which shows he made a cash withdrawal for his portion of the rent payment. The Tenant also argued that the Dispute Resolution Officer failed to give adequate (or any) consideration to the Landlord's failure to respond to a question as to why he did not approach the Tenant earlier if the Tenant had not paid rent as the Landlord alleged. The Tenant further argued that the Dispute Resolution Officer could have awarded him nominal damages or aggravated damages even in the absence of any evidence of “tangible losses.”

I find that the Tenant's application for Review cannot succeed for the following reasons:

1. The Tenant's bank statement showing a withdrawal of \$300.00 on August 30, 2011 is not sufficient on its own to conclude that the Landlord received those funds. The Dispute Resolution Officer found that the Tenant had attempted to pay \$300.00 to the Landlord for September 2011 rent but that the Landlord did not accept the payment. The Tenant provided no other evidence to show that the Landlord did accept that payment but instead argued that the Landlord would have approached him sooner if he had not paid the rent. However, an allegation unsupported by evidence does not meet the test set out above.
2. It is not enough to allege that someone giving evidence made false statements at the hearing which were met with a counter-statement by the party applying. The Dispute Resolution Officer found on that the Landlord's evidence regarding a rent payment for September 2011 was equally as credible or probable as the Tenant's. On that basis the Dispute Resolution Officer found that the Tenant had failed to show that he had paid rent (or in doing so had established a tenancy).

3. I find that the Tenant's bank statement is not new evidence; that document was in existence and could have been provided by the Tenant at the hearing and therefore does not meet the definition of "new evidence" required to be granted a Review. It is up to a Party to prepare for a dispute resolution hearing as fully as possible and to supply all relevant evidence at that time

The Review process is not an opportunity to re-argue the merits of the case. In this case, the Dispute Resolution Officer found that the Tenant had failed to meet the burden of proof on him to show that he had a tenancy agreement with the Landlord. In the absence of a tenancy agreement (whether written or verbal), the Act does not apply to a dispute and as a result, the Dispute Resolution Officer would have had no jurisdiction to make an award of compensation even if the Tenant could have proven damages.

Decision

The Tenant's application is dismissed without leave to reapply pursuant to s. 81(1)(b)(ii) that his application does not disclose sufficient evidence of a ground for review. Consequently, the decision made on January 17, 2012 remains in force and effect.

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 14, 2012.

Residential Tenancy Branch