



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNSD

Introduction

On August 14, 2012 Dispute Resolution Officer (DRO) XXXXXX provided a decision on the cross Applications for Dispute Resolution with both parties seeking monetary compensation. The hearing had been conducted on August 14, 2012.

That decision granted both parties were entitled to some compensation and overall the landlord was granted a monetary order as the DRO determined he was entitled to more compensation than the tenant was. The tenant did not request an extension of time to apply for Review Consideration.

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 she has evidence that the director's decision was obtained by fraud.

Issues

It must first be determined if the tenant has submitted her Application for Review Consideration within the legislated time frames required for reviews.

If the tenant has submitted her Application within the required time frames it must be decided whether she is entitled to have the decision and order of August 14, 2012 suspended with a new hearing granted because she has provided sufficient evidence to establish that the landlord obtained the decision based on fraud.

Facts and Analysis

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 15 days after a copy of the decision or order

is received by the party, if the decision does not relate to a matter of possession of the rental unit; a notice to end tenancy; withholding consent to sublet; repairs or maintenance or services and facilities.

From the decision of August 14, 2012 the issues before the DRO were related to the landlord's claim for damages and unpaid rent and the tenant was seeking damages. As such, I find the decision and order the tenant is currently requesting a review on do not relate to a matter of possession of the rental unit; a notice to end tenancy; withholding consent to sublet; repairs or maintenance or services and facilities and as such the tenant was allowed 15 days to file her Application for Review Consideration.

From the tenant's submission she indicates that she received the August 14, 2012 decision and order on September 1, 2012 and filed their Application for Review Consideration with the Residential Tenancy Branch on September 10, 2012 (9 days after receipt of the decision and order). I find the tenant has filed her Application for Review Consideration within the required timelines.

The tenant submits the landlord lied. The landlord states there have been no improvements, the place is the same, the only difference the back bedrooms now have wood laminated floors. She states that the landlord sent a picture of someone else's yard. The tenant continues that the landlord was lying about the picture of the yard and that she has not seen any pictures of improvements that he said he did.

In a detailed letter submitted in addition to her Application for Review Consideration the tenants reargues some of the issues resolved in the hearing, such as the use of hydro and gas; she questions the decision and notes that she believes it is unfair.

Claiming that someone lied is not sufficient evidence to establish that the party has in fact lied or obtained an order by fraud. While the tenant has provided some photocopied photographs she has provided no context or what they should be compared to from the original file, as such, I find the photographs submitted in her Application for Review Consideration are of no evidentiary value and do not support her claim of fraud.

And finally, the tenant's re-arguments of issues discussed in the hearing do not provide any evidence of fraud but rather the tenant's attempt to re-argue the case. An Application for Review Consideration is not an opportunity to do so.

Decision

For the reasons noted above, I find the tenant has failed to establish the decision and orders were obtained by fraud and I dismiss her Application for Review Consideration.

The decision made on August 14, 2012 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: September 14, 2012.

Residential Tenancy Branch