



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNR DRI MNDC

Introduction

This Application for Review Consideration was filed by the tenant on December 3, 2013, having received the Decision on December 2, 2013. The tenant has applied for a Review Consideration of the Decision dated December 2, 2013. The Decision and Order granted the landlord an order of possession effective at 1:00 p.m. on December 31, 2013 and a monetary award to the tenant in the amount of \$153.00.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of a 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 has applied on the third ground.

Issue

- Has the tenant provided sufficient evidence that the director's decision was obtained by fraud?

Facts and Analysis

Section 80 of the *Act* states that an applicant **must** submit their application **within 2 days** of the date they receive the Decision or Order when the Decision or Order relates to an order of possession under the *Act*. The tenant filed their Application for Review Consideration on December 3, 2013, having received the Decision on December 2, 2013. As a result, I find that the tenant has submitted their Application within the timeline provided for under section 80 of the *Act*.

The Application contains information under section C3, from the tenant alleging that the director's decision was obtained by fraud.

The tenant writes in their Application:

“There are too many to list here. Please see attached Master Document for a complete list and explanation. Some explanations are necessary as background information.”

[Reproduced as written.]

The tenant submitted 83 pages of documents in support of their Application for Review Consideration, in addition to the Decision dated December 2, 2013.

Within the 83 pages of documents submitted by the tenant, the tenant indicates “new evidence” eleven times in bold in the “Master Document” referred to in section C3 of the tenant's Application. Within the eleven bolded items described by the tenant, the tenant asks questions such as “Who took the lock of my locker?”, “Was it the disposal company?”, and “Why is there not a date on the Notice in the evidence?”, to name three examples. In addition, the tenant makes reference to “cctv tapes” where it reads “A review of the cctv tapes will show...” but has not provided the cctv tapes in evidence to support their Application for Review Consideration. The remainder of the 83 pages from the tenant is comprised of points where the tenant clearly disagrees with the Decision from the original Arbitrator and disputes the findings of the Arbitrator and requests that the Arbitrator review the evidence further.

In addition to the above, I also note that on the Decision dated December 2, 2013, submitted by the tenant, the tenant writes “This document is null & void as there was no hearing on December 2, 2013.” I will address this statement from the tenant at the end of this Decision.

Decision

Based on the above, the evidence and Application submitted, and on a balance of probabilities, I find the following.

In order to be successful on the third ground for Review, the tenant must prove, based on a balance of probabilities, that the director's decision was obtained by fraud. The tenant has provided a "Master Document"; however, I find the tenant's "Master Document" refers to items that the tenant claims is "new evidence", yet the tenant did not apply for a Review based on new and relevant evidence grounds under the *Act*. Rather, the tenant applied on the third ground alleging that the director's decision was obtained by fraud.

For the tenant to be successful on the third ground, the tenant must provide sufficient evidence to support that the director's decision was obtained by fraud. In regard to the tenant's evidence, I find that the tenant's Application and supporting documents merely consist of arguments that the tenant had the opportunity to present during the original hearing. The fact that the tenant disagrees with the conclusion reached by the Arbitrator does not amount to fraud.

I find the tenant has failed to provide any supporting evidence to prove that the Decision was obtained by fraud. For example, the tenant refers to "cctv tapes" but failed to submit the cctv tapes in evidence. In addition, the tenant refers to "new evidence" but fails to indicate how that evidence is relevant to proving that the Decision was obtained by fraud or how that evidence was used to get the desired outcome.

I find the tenant's "Master Document" to be confusing and that the tenant does not clearly explain what information was fraudulent and how that it was used to get the desired outcome. Furthermore, the tenant has included large "DO NOT COPY" printed across many of the pages submitted in evidence by the tenant which are opaque and block out many of the words resulting in the many of the words on the pages submitted by the tenant to be indecipherable. It is not up to the Arbitrator to decipher the tenant's Application for Review Consideration, and I find that the tenants' Application merely consists of the tenant attempting to re-argue the matter. Therefore, **I dismiss** the tenants' Application due to insufficient evidence and particulars being provided. As the tenant's Application for Review Consideration has been dismissed on the third ground, the Decision and Order issued on December 2, 2013, **stand and remain in full force and effect.**

Regarding the tenant's statement regarding the incorrect date of the hearing written on the December 2, 2013 Decision, the tenant may wish to apply for a Correction under section 78 of the *Act*. I note that an incorrect date does not nullify the Decision in this

instance. The tenant's Application for Review Consideration does not extend any applicable time limits under section 78 of the *Act*.

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: December 9, 2013

Residential Tenancy Branch