Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes FF MNDC O RR

Introduction

This Application for Review Consideration was filed by landlord BS, on January 14, 2014, seeking a Review Consideration of the Decision dated December 30, 2013 and having received that decision by mail on January 11, 2014. The Decision resulted in the Arbitrator granting the tenants a monetary order in the amount of $250.00 due to the landlord restricting laundry facilities contrary to section 27 of the *Act.*

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 landlord has applied on the second and third grounds.

Issues

- Has the landlord provided sufficient evidence that the landlord has new and relevant evidence that was not available at the time of the original hearing?
- Has the landlord provided sufficient evidence that the director's decision was obtained by fraud?

Facts and Analysis

The Application contains information under section C2, on why the landlord has new and relevant evidence with respect to the hearing held on December 30, 2013.

The landlord writes in his Application:

> "1. Posted usage of laundry service provided by landlord, clearly stating cold water use only.
> 2. Statements from other tenants clearly acknowledging that laundry facility by landlord is only cold water use.
>
> These items were not available at the time of the hearing because I was very ill in December (attached Doctors note), I then was re-scheduled for work over the holidays and ended up working a mixture of afternoon shifts and the dayshifts giving me less than 6 hrs sleep, which, honestly I was not functioning that well as I was still recovering from my illness and unable to make the call because i was working and i am the millwright who cannot walk away from the machines when they are not working as it shuts down production of the facility."
>
> [Reproduced as written]

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

The landlord writes in his Application:

> "The tenant stated that the landlord restricted the use of laundry facilities when the Tenants started using cloth diapers for their new baby.
> the tenant stated that because of the restricted use of the laundry facilities they have ended the tenancy with a mutual agreement to end the tenancy.

> I did not restrict the tenants usage of the laundry facilities. When I replaced the old dryer with a new one I noticed that the hotwater was set on the washer. In talking to the other tenants it was revealed that [name of tenant applicants] had turned the hot water on. I then informed the them again that the usage of the laundry facilities (as posted) was to be adhered to and cold water usage was only permitted. The Tenant stated that since the birth of her child that the unit was too small and she was paying for a storage facility also that was why she was moving out.
>
> The applicants did not mention to the arbitrator that they knew that it was cold water use only as posted, they did not say that they turned on the hotwater for the laundry, they lied and stated that their use was restricted and it never was as it had always been cold water usage and that was still available to the tenant.
>
> The tenant made it seem like the reason she was moving out was because of not being able to use hotwater, however clearly stated that it was because she had out grown the unit since she had her baby."
>
> [Reproduced as written]

The landlord submitted a note from Dr. MJD dated December 11, 2013 indicating that landlord BS has or will be off work "Dec 9 to 13". The landlord also submitted a note from ND that is not dated. The note from ND, who claims to be a tenant at the rental unit address, indicates that there has been a sign above the washing machine which clearly states "cold water only". The landlord also submitted an illegible notice which has a handwritten note on it which reads "posted in laundry room", however the text of the notice is illegible and the notice is not dated.

Decision

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

I will first determine if the landlord has submitted their Review Consideration Application within the timelines set out under section 80 of the *Act.* Under section 80 of the *Act*, as the decision relates to section 27 of the *Act*, the landlord had five days to submit the Review Consideration Application. The landlord writes that he received the decision on January 11, 2014 by mail, and applied on January 14, 2014. As a result, I find the landlord did submit his Application for Review Consideration within the five day timeline permitted pursuant to section 80 of the *Act.*

In order to be successful on the second ground for review, the landlord must prove that new and relevant evidence exists that was not available at the time of the original hearing.

Firstly, I note that the landlord has not applied on the first ground, which is the ground that relates to "A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control." Furthermore, I find the note from Dr. MJD is not sufficient evidence to support the landlord's claim that he was unable to provide the documents included in the Review Consideration Application. In the note from Dr. MJD, which is dated December 11, 2013, the dates indicated are "Dec 9 to 13" and the hearing was on December 30, 2013. As a result, I find that the note from Dr. MJD does not constitute "new" evidence as it is dated on December 11, 2013, and is not "relevant" as the dates listed are prior to the hearing held on December 30, 2013, and does not support that the landlord was not available on December 30, 2013. Furthermore, the landlord has failed to provide any documentary evidence to support the landlord's work schedule interfered with the hearing held on December 30, 2013.

I find that the note from NB which is not dated, and the notice which is also not dated, do not support "new" evidence, as the documents are not dated. Furthermore, I find it reasonable that due to two landlords being named in the tenants' application and being listed on the tenancy agreement, that either one of the two named landlords or their agent could have attended the hearing to present the arguments described in the landlord's Application for Review Consideration. The landlord has provided no explanation as to why the other named landlord or an agent could not be present at the December 30, 2013 hearing. Based on the above, **I dismiss** this portion of the landlord's Application due to insufficient evidence. The landlord failed to attend the hearing on December 30, 2013, and evidence dated prior to the hearing on December 30, 2013 or other undated evidence **does not** constitute "new and relevant" evidence as required when applied for a Review Consideration based on the second ground.

In order to be successful on the third ground for Review, the landlord must prove based on a balance of probabilities that the director's decision was obtained by fraud.

For the landlord to be successful on the third ground, the landlord must provide sufficient evidence to support that the director's decision was based on fraud. Regarding the landlord's claim of fraud, I find that the landlord's Application merely consists of an argument that the landlord had the opportunity to present if the landlord or an agent for the landlord had attended the hearing. Furthermore, the landlord has

provided a notice which is illegible and other evidence which is either not dated, or existed prior to the date of the hearing.

The fact that the landlord disagrees with the decision issued by the Arbitrator does not amount to fraud. I find the landlord has failed to provide supporting evidence to prove that the decision was obtained by fraud, and that the landlord is merely attempting to present arguments that could have been presented by attending the original hearing held on December 30, 2013. The landlord could have arranged to have had the other named landlord or an agent attend on behalf of the landlord, yet has provided no evidence as to why an agent or the other named landlord was unable to attend the hearing. Therefore, **I dismiss** this portion of the landlord's Application due to insufficient evidence.

As the landlord's Application has been dismissed on both grounds, the decision and monetary order dated December 30, 2013, **stand and remain in full force and effect.**

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: January 21, 2014

Residential Tenancy Branch