

## **REVIEW CONSIDERATION**

### **Introduction**

By application received on April 23, 2010, the tenant seeks a Review Hearing on a Decision dated April 15, 2010 following a Direct Request proceeding. A Direct Request proceeding is conducted on the written submissions of the landlord without appearances, a proceeding granted where a landlord has issued a Notice to End Tenancy for unpaid rent.

In order to qualify for a Direct Request, the landlord must submit proof of service of the Notice to End Tenancy and the Notice of Direct Request proceeding among other documents. If the application succeeds, the landlord may be issued with an Order of Possession in support of the Notice to End Tenancy and a Monetary Order for the unpaid rent.

A tenant may apply for a Review Hearing of a Direct Request proceeding if the applicant submits evidence suggesting the decision may have been based on fraudulent evidence.

### **Issue(s) to be Decided**

This application requires a decision on whether the tenant's application raises sufficient doubt as to the veracity of the evidence given on the original application to warrant a Review Hearing.

### **Background and Evidence**

In the present application, the tenant alleges she did, in fact, pay the \$1,524.82 of the \$2,200 rent for on April 8, 2010, withholding a portion for cleaning and repairs, an allegation supported by a bank statement showing a payment out in that amount.

The tenant states that the landlord made application the following day and claimed the full \$2,200 which, in addition to the filing fee, resulted in the landlord receiving a Monetary Order for \$2,250. The Dispute Resolution Officer's decision, an Order of Possession and a Monetary were granted in favor of the landlord on the landlord's evidence that that the full rent had not been paid.

In addition, the tenant claims that the 10-day Notice to End Tenancy was not served as stated in the landlord's application which claims it was served on April 2, 2010 "by hand," an expression I find to be ambiguous as it would be applicable to personal service or posting on the tenant's door.

## **Analysis**

Section 79 of the *Act* provides for the opportunity of a Review Hearing for reasons including a fraudulent representation as alleged in the subject application.

A Direct Request proceeding provides a mechanism to expedite routine applications from landlords in cases where the tenant has not paid rent and the right to regain possession is clearly granted by the statute.

Given that this procedure involves no automatic participation by tenants, it is essential that the landlord submissions be complete and true to ensure the adherence to principles of natural justice and administrative fairness.

With the exception of rare circumstances of emergency repairs or an order resulting from a hearing, a tenant has no right to withhold rent, and I see no apparent right of the tenant to have withheld any amount in the present circumstances.

However, this appears at its heart to have been a dispute over repairs rather than a clear matter of unpaid rent as Direct Request Proceedings are intended to address.

While I do not necessarily make a finding of fraud on the part of the landlord, I do find that the tenant's application raises sufficient doubt, particularly with respect to the amount claimed, and that if the Dispute Resolution Officer had had the full evidence before him, the decision may have differed.

## **Conclusion**

I therefore find that a Review Hearing is warranted. I order that the Decision and Orders of April 15, 2010 (orders corrected on April 21, 2010) be suspended until a review hearing has been completed.

Within three days of receiving this decision granting a review hearing, the tenant must serve the landlord with a copy of this decision and the enclosed notice of the time and date of the review hearing.

Failure to attend the hearing at the scheduled time, with all relevant documents and/or witnesses, will result in a decision being made on the basis of any information before the dispute resolution officer and the evidence of the party in attendance at the hearing.

**Date of Decision:** April 28, 2010