



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes:

Introduction

This is an application by the landlord for a review of a decision rendered by XXXX, Dispute Resolution Officer (DRO) on March 22, 2011, with respect to an application for dispute resolution from the tenant.

A DRO may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the application does not disclose sufficient evidence of a ground for review;
- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the arbitrator should be set aside or varied;
- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

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 landlord requested a review on the basis of all three of the above-noted grounds. The landlord's request focussed on his allegation that the matter addressed in the March 22, 2011 decision was concluded on June 1, 2010 and that the tenant's application was made more than two years after the end of her tenancy.

Facts – Unable to Attend

The Application for Review Form required the landlord to list the reasons he was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the party's control. He responded that "The matter was concluded on June 1/10." He did not complete the remainder of this portion of the Form, nor did he explain how it was concluded on that date.

Analysis – Unable to Attend

The landlord has neither provided an adequate explanation for why he was unable to attend, nor has he provided sufficient details to clarify his request for review under this ground. I dismiss the landlord's application for review on the basis that the application discloses insufficient evidence of this ground for review and provides little relevant detail regarding his request.

Facts – New and Relevant Evidence

The only section of this portion of the Application for Review Form that the landlord completed was the request to list each piece of new and relevant evidence which was not available at the time of the original hearing. He responded that "The tenant did not apply for the second resolution hearing within 2 years of being a tenant." The landlord did not explain how this was new evidence, why he could not have presented this information to the DRO, and why this would have made a difference to the DRO's decision.

Analysis – New and Relevant Evidence

The evidence the landlord attached was limited for the most part to a number of emails that did not definitively establish when the tenancy actually ended. Based on the landlord's evidence which could have been presented had the landlord participated in the March 14, 2011 hearing, it would seem that the landlord claims that the tenant vacated the rental unit on January 12, 2009. The Residential Tenancy Branch received the tenant's application for dispute resolution on January 13, 2011. In the landlord's Application for Review, he maintained that the tenant did not pursue the matter in dispute, the return of her security deposit, within two years of the end of her tenancy.

In DRO XXXX's decision, she noted that the tenant provided the landlord with her written forwarding address for the purposes of returning her security deposit on February 7, 2009, well within the one-year time period for doing so.

Although the landlord has provided few details, it appears that the basis for his application for review is that the DRO should have dismissed the tenant's application because it was filed beyond the two-year statutory time limit for commencing a dispute resolution application. Assertions of this type which maintain that a statutory provision

was not followed extend beyond the grounds for review of this matter on the basis of new and relevant evidence.

I dismiss the landlord's application as I do not find that he has provided sufficient evidence to demonstrate that the information he has submitted constitutes new and relevant evidence that could not have been presented at the original hearing. Once more, the landlord did not provide sufficient relevant detail regarding his request.

Facts – Fraud

In this section of the Application for Review Form, the landlord was asked to describe or list the evidence which is considered to be fraudulent. The landlord responded as follows:

She knew her tenancy ended Dec. 31/08. The tenant applied more than 2 years after the end of tenancy. Therefore the branch should not have considered her application.

The landlord chose to not complete any of the other three sections of this portion of the Form.

Analysis - Fraud

In this section of the Form, the landlord identified a different date when this tenancy allegedly ended. In this section, the landlord repeated the other allegations he made in his application regarding the tenant's submission of her application for dispute resolution after the expiry of the two-year time limit for taking such action. This type of allegation does not demonstrate fraud on the tenant's part.

I find nothing in the landlord's application that demonstrates that the DRO's decision was obtained by fraud. Rather, it identifies the landlord's disagreement with the statutory basis for the DRO's decision. I dismiss the landlord's application as he has failed to provide sufficient evidence of fraud.

In reaching these determinations regarding the landlord's application, I note that the landlord has not provided full particulars of the issues submitted for review. In his application, he noted several times that this matter was concluded on June 2, 2010. However, he failed to provide any further detail regarding why he identified June 2, 2010 as the date when the matter was concluded and on what basis he alleged that closure was obtained.

Decision

The decision made on March 22, 2011 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*.