

DECISION ON APPLICATION for REVIEW CONSIDERATION

Dispute Codes: OPR

Introduction

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.

On September 9, 2011, the Residential Tenancy Branch received an Application for Review from the tenant seeking a Review Hearing on a Decision dated August 30, 2011 following a Direct Request proceeding. A Direct Request proceeding is conducted on the written submissions of the landlord without appearances, a proceeding available when 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

Did the tenant's application raise sufficient doubt as to the veracity of the evidence given on the original application to warrant a Review Hearing?

Background and Evidence

In the Decision of August 30, 2011, the Dispute Resolution Officer (DRO) accepted the evidence of the landlord that there was a rent shortfall of \$600.00 in August of 2011. Of note, however, is the landlord's application, which stated that the tenant failed to pay rent of \$600.00 that was due on **July 1**, 2011.

The DRO granted an Order of Possession effective two days after service on the tenant.

In the present application, the tenant submits that he offered to pay rent, but that payment was refused by the landlord.

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.

Therefore, 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.

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 with respect to whether the tenant was given an opportunity to make payment either on time or within the five days of receipt of the Notice to End Tenancy as provided by section 46(4) of the *Act*.

Conclusion

I find, if the tenant's submissions are true, the DRO's Decision may have resulted in a different outcome and therefore a Review Hearing is warranted. I order that the Decision and Order of August 30, 2011, be suspended until a participatory review hearing has been completed at a time and date set out in the enclosed Notice of Hearing.

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.

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 12, 2011.

Residential Tenancy Branch