



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC MNR MNSD

Introduction

On August 30, 2011 a Dispute Resolution Officer (DRO) provided a decision on the landlord's Application for Dispute Resolution seeking a monetary order for damage to the rental unit; unpaid rent or utilities; to keep all or part of the security deposit; and for monies owed or compensation for damage or loss.

That decision granted the landlord a monetary award for parts of the claim as a result, at least in part, of the tenant's absence and therefore undisputed testimony provided by the landlord.

Division 2, Section 79(2) under the *Residential Tenancy Act (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 tenant submits that he received a copy of the monetary order in the mail on October 7, 2011 and that this was the first he was informed of the decision and/or order. The tenant requests an extension of time to make this Application.

As this matter does not relate to an order of possession or a notice to end tenancy the tenant had 15 days from the date he received it to file an Application for Review Consideration. The tenant filed his Application for Review Consideration on October 13, 2011, within 15 days of the date he states he received the order and as such has no need for an extension.

The tenant submits in his Application for Review that that he was unavailable at the time due to circumstances beyond his control and that the landlord obtained the decision and order by fraud.

Issues

The issues to be decided are whether the tenant is entitled to have the decision of August 30, 2011 set aside and a new hearing granted because he has provided sufficient evidence that he was unable to attend the hearing due to circumstances beyond his control or the original decision was obtained by fraud.

Facts and Analysis

In his Application for review the tenant states that he had no knowledge of the hearing and he did not refuse to accept any registered mail. The decision issued on August 30, 2011 states: "The landlord's testified that she attempted to serve the tenant with copies of this application and the evidence on July 5, 2011 by registered mail. The tenant refused or neglected to retrieve the packages."

As the original decision does not indicate how the landlord confirmed the current address of the tenant or that the landlord provided any corroborating evidence, such as a tracking print out from Canada Post showing the disposition of the notice, I accept the tenant may not have been served with notice of the hearing.

The tenant in response to the question "What testimony or additional evidence would you have provided if you were at the hearing" the tenant wrote: "If I knew where the request for a hearing was sent I can provide evidence that I had no knowledge of it."

The question seeks to understand what evidence and/or testimony would have been provided if the tenant had attended the original hearing on the merits of the landlord's claim against the tenant not on the evidence regarding why the tenant did not attend the hearing. I note the tenant has provided no indication, in this section, of evidence or testimony he would have presented at the original hearing.

In his Application for Review Consideration the tenant asserts the landlord obtained the decision and order by fraud because the condition of the rental unit was the same at the end of the tenancy as it was at the start of the tenancy. The tenant indicates that the landlord refused to complete a "walk through" and could therefore not provide any evidence that the tenant caused the damage.

The tenant also contends that it was the landlord's refusal to make repairs to the items she has now claimed the tenant damaged that caused the tenants to end the tenancy. Based on the submissions of the tenant I find the tenant has failed to establish the landlord obtained the decision based on fraud.

Section 81 of the *Act* states an Application for Review may be dismissed if, among other things, the Application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be varied or set aside.

Upon review of the entire Application for Review I find the tenant has established that he was unable to attend the original hearing for reasons beyond his control (i.e. that he may not have been served with notice of the hearing).

Despite the fact that the tenant did not provide any evidence to establish the condition of the rental unit I note the original decision was based, at least in part, on the absence of any testimony from the tenant disputing the landlord's claim.

I also note that as it is the landlord's responsibility, under the *Act*, to document the condition of the rental unit at the start and end of the tenancy, it is very likely the tenant has no other ability to provide evidence other than his testimony and as such, I find declining the tenant's application for a new hearing is contrary to the interests of natural justice and administrative fairness.

Decision

For the reasons noted above, I find the tenant has established sufficient grounds for a new hearing on these matters. Details of the new hearing are included in the attached documents. The tenant must serve the landlord within 3 days of receiving this decision with a copy of this decision and the Notice of Hearing documents.

The decision made on August 30, 2011 is suspended until such time as the new hearing has been completed and a decision is given to the parties, in accordance with Section 81(3).

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: October 18, 2011.

Residential Tenancy Branch