



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC

Introduction

On October 12, 2011, a Dispute Resolution Officer (DRO) provided a decision on the tenant's Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause.

That decision granted the tenant's Application and found the tenancy to be in full force and effect.

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 submits in his Application for Review Consideration that he has evidence by a tenant that witnessed verbal abuse and threats was received late.

Issues

The issues to be decided are whether the landlord is entitled to have the decision of October 12, 2011 set aside and a new hearing granted because he has provided sufficient evidence that he has evidence that was not available at the time of the hearing.

Facts and Analysis

The landlord has submitted, with his Application for Review two written statements from other tenants in the residential property and two photographs. One of these written

statements and both photographs were already on the original hearing file, however they were submitted late to that hearing, received by the Residential Tenancy Branch the day before the hearing.

In the decision the DRO wrote: "Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present."

From the above I accept the DRO considered the late evidence provided at the original hearing. In addition, the decision notes the landlord was served with notice of the hearing personally on September 14, 2011, nearly one month prior to the hearing.

If a landlord issues a 1 Month Notice to End Tenancy for Cause, a reasonable person would expect the landlord to have the evidence of the causes to end the tenancy already documented prior to issuing the notice, let alone prior to a hearing to discuss the merits of the notice.

In addition, the landlord was aware of the hearing for nearly a month in advance and the evidence he now submits as new (most of which is already on the hearing file) consists of statements from other tenants in the residential property, one of which was submitted to the original hearing and one that is undated with no explanation as to why it was not submitted to the original hearing.

As such, I find the landlord has failed to establish that he has any new and relevant evidence that was not available at the time of the original hearing.

Decision

For the reasons noted above, I dismiss the landlord's Application for Review

The decision made on October 12, 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*.

Dated: October 25, 2011.

Dispute Resolution Officer

Residential Tenancy Branch