



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNSD

Introduction

On October 17, 2011 Dispute Resolution Officer (DRO) XXXXX provided a decision on the tenant's Application for Dispute Resolution seeking return of their security deposit. The hearing had been conducted on October 14, 2011.

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

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 that that he was unable to attend the hearing at the time due to circumstances beyond his control; that he has new and relevant evidence and that the tenant obtained the decision and order by fraud.

Issues

The issues to be decided are whether the landlord is entitled to have the decision of October 17, 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; that he has new and relevant evidence or the original decision was obtained by fraud.

Facts and Analysis

In his Application for Review Consideration in response to the question "What happened that was beyond your control or that could not have been anticipated that prevented you from attending the original hearing" the landlord responded that he had been in Europe

from July 4, 2011 to August 9, 2011 (known to the tenants) and from September 9, 2011 to November 6, 2011 the landlord was in another BC community.

I find the fact the landlord was in Europe in July and August 2011 to be irrelevant as to why he could not attend a hearing on October 14, 2011. In addition, most Dispute Resolution hearings, including this one, are conducted via teleconference precisely so that parties do not have to attend an in person hearing and can call in from any location, across the province or internationally.

I find regardless of the landlord's location at the time of the hearing he has provided no evidence of why he could not call in to the conference call. As such, I find the landlord has failed to establish that was not able to attend the hearing due to circumstances that could not be anticipated and were beyond his control.

When asked, in the Application for Review Consideration, to list each item of new and relevant evidence and state why it was not available at the time of the hearing and how it is relevant the landlord responded that for July, August and October 2011 he was not in the area of the rental unit and he cannot remember receiving any information pertaining to the proceedings.

I find the landlord has failed to identify any new evidence, why any new evidence was not available at the time of the hearing or how it is relevant and as such has failed to establish that he has new and relevant evidence that would warrant a new hearing.

In relation to the landlord's claim that the decision and order were obtained by fraud, the landlord states that the tenants knew he was in Europe when they filed the Application for Dispute Resolution and that "The evidence submitted was false".

The landlord fails to identify what evidence submitted to the original hearing was false and what would have been true, other than his trip to Europe, which, I find is irrelevant to the merits of the tenant's Application and as such not applicable to the grounds to be granted a new hearing.

While I note the landlord has identified that he may have a financial claim against the tenants for matters related to this tenancy, the decision of October 17, 2011 and of this Review Consideration do not impede the landlord's ability to file an Application for Dispute Resolution to claim any losses against the tenants.

Decision

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

The decision made on October 17, 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: November 16, 2011.

Residential Tenancy Branch