



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC FF

Introduction

On December 20, 2011 Dispute Resolution Officer (DRO) XXXXX provided a decision on the tenant's Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause. The hearing had been conducted on December 19, 2011.

That decision set aside the 1 Month Notice and ordered the tenancy to continue until it is ended in accordance with the *Residential Tenancy Act (Act)*.

Division 2, Section 79(2) under the *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 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 December 20, 2011 set aside and a new hearing granted because he has provided sufficient evidence that he has new and relevant evidence or the original decision was obtained by fraud.

Facts and Analysis

The landlord submits that he has new and relevant evidence that was not available at the time of the hearing, in the form of a recording of an inspection completed on the rental unit on the evening after this hearing was conducted.

The landlord submitted the recording on a DVD-R disc. Residential Tenancy Branch Rule of Procedure 11.8 states that “Parties are required to provide their own audiotape playback equipment and, in some locations, may need to provide videotape playback equipment and monitor. Videotape must be in VHS format unless the party provides other compatible playback equipment. [Note: the Rules of Procedure will be updated to reflect CD/DVD technology when RTB is able to accept and use those formats].”

As such, I have no ability to review the evidence submitted in the DVD-R format and the landlord did not provide any playback equipment that would allow me to do so. As noted above, the landlord does describe in his submission that the disc contains a recording taken on the evening that this hearing occurred.

Even if I were able to view the material, as it pertains to an event that occurred after the Notice to End Tenancy was issued it is not relevant evidence to determine the validity of causes that led to the issuing of the Notice in the first place. I find the landlord has, in relation to the disc, failed to provide sufficient evidence of new and *relevant* evidence

In relation to the landlord’s claim that he has new and relevant evidence that the tenant smokes the landlord submitted 5 photographs and identifies that two of the pictures show the tenant and three pictures show the tenant’s sister who he states now lives with the tenant.

The landlord’s written submission states “...these current, new photos were not available to us at the time of the hearing because we did not know they even existed. We recently found these pictures on the internet by doing additional, further searches. For unknown reasons, our past searches of the internet did not reveal these pictures.”

The landlord has not provided any statements on how, if at all, his most recent searches were conducted on the internet; what parameters for the search were used; or how he has determined that these photographs are “current, new photos”. As such, I find the landlord has failed to provide sufficient evidence to establish why their existence could not have been known by the landlord prior to the hearing.

I accept, from the decision, that DRO XXXXX noted “The tenant testified that the occupants upstairs do smoke, that the tenant is non-smoker and that her friends do not smoke on the property.”

However, I also note that DRO XXXXX relied only on the portion of the tenant’s testimony in regard to the statement that the occupants of the upstairs rental unit

smoked and on the landlord's lack of evidence as to who caused the cigarette burns in the carpet and prove that the tenant or any of her guests had *smoked on the property*.

The landlord does not provide any explanation of the location depicted in the photographs as to where the subjects in the photographs are smoking. As such, I find the landlord has not established that he has *new* and *relevant* evidence with regards to smoking on the residential property.

As to whether or not the tenant obtained the decision on fraud, in accordance with Residential Policy Guideline 24 the landlord must provide sufficient evidence to prove all three of the following points:

1. Information presented at the original hearing was false;
2. The person submitting the information knew that it was false; and
3. The false information was used to get the outcome desired by the person who submitted.

Despite photographic evidence that the landlord shows the tenant and her sister have smoked, the landlord has provided no context for the photographs. For example, there is no date on the photographs; a photograph taken in the past does not provide evidence that the tenant currently smokes. As such, I find the landlord has failed to establish that the information presented at the original hearing was false.

Having found that the landlord has failed to establish the 1st point above, I find the landlord has failed to establish the tenant obtained the order based on fraud.

Decision

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

The decision made on December 20, 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: December 23, 2011.

Residential Tenancy Branch