

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNSD

Introduction

This is an application by the landlord for a review of the decision of a Dispute Resolution Officer (DRO) dated December 19, 2011.

Section 79(2) of the *Residential Tenancy Act* states that a party to the dispute may apply for a review of the decision. The application for review must contain reasons to support one or more of the following 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.

In this application, the landlord has applied for review under grounds (1), (2) and (3).

Issues

Has the applicant for review provided sufficient evidence to support one of the indicated grounds for review?

Facts and Analysis

The application contains information under grounds 1, 2 and 3.

Ground 1: Unable to attend the hearing-

The landlord applied for a review on the basis that she was unable to attend the hearing because of circumstances that could not be anticipated and were beyond their control. Specifically, the landlord stated that she did not receive the Notice of Hearing.

During the hearing on December 19, 2011, the DRO reviewed evidence and accepted affirmed testimony from the tenant that the Notice of hearing had been sent to the landlord on October 7, 2011, via registered mail. The registered mail was sent to the address listed on the landlord's application as well as on the condition inspection report supplied by the landlord.

I am therefore satisfied that the landlord was served the Notice of Hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act"), whether she chose to collect her mail or not.

I therefore do not accept that the landlord was unable to attend due to circumstances that could not be anticipated and were beyond her control.

Ground 2: New and relevant evidence not available at the time of the hearing-

The landlord in her application for review submitted that she had new and relevant evidence that was not available at the time of the hearing.

The evidence submitted by the tenant in her application for review of a hearing held on December 19, 2011, which she claimed was not available at the time of hearing included copies of cheques dated September 15, 2011, an email dated August 10, 2011, a tenancy agreement dated July 17, 2010, which does not list the tenant, and a condition inspection report, which was not signed by the tenant allowing a deduction from her security deposit.

Under the Dispute Resolution Proceedings Rules of Procedure, a party must present copies of all available documents, photographs, video or audio tape evidence they intend to rely upon as evidence at the dispute resolution proceeding at least five (5) days before the dispute resolution proceeding.

Under Residential Tenancy Branch Policy Guidelines, new evidence includes evidence that has come into existence since the dispute resolution hearing or evidence which the applicant could not have discovered with due diligence before the hearing.

Evidence in existence at the time of the original hearing which was not presented by the party will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through taking reasonable steps, have become aware of the evidence.

I find that the landlord's documentary evidence submitted with her application for review was not new and was available at the time of the hearing, whether or not the landlord chose to participate in the hearing.

I therefore do not accept the landlord's claim that she has new and relevant evidence that was not available at the time of the original hearing.

Ground 3: Decision was obtain by fraud-

This ground applies where a party has evidence that the Dispute Resolution Officer's decision was obtained by fraud. A party who is applying for review on the basis that the Dispute Resolution Officer's decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the Dispute Resolution Officer, and that that evidence was a significant factor in the making of the decision. The burden of proving this issue is on the person applying for the review. If the Dispute Resolution Officer finds that the applicant has met this burden, then the review will be granted.

The landlord alleged that the tenant has committed a fraud due to the tenant holding onto a cheque for \$175.00 and not cashing it until after the date of the hearing in order to achieve a doubling of her security deposit.

In her Decision, the DRO specifically mentioned that the tenant had received a cheque for \$175.00 and did not agree with this deduction.

Additionally, the landlord stated that the tenant was denying the final condition inspection report, which she signed, agreeing to a deduction of \$75.00. A review of the evidence submitted by the landlord, a copy of the final condition inspection report, shows that a signature, appearing to be that of the tenant, is located in the portion of the report contesting that the report fairly represented the condition of the rental unit. As well, the portion of the condition inspection report agreeing to a deduction of \$75.00 was not signed by the tenant.

The landlord may disagree with the Dispute Resolution Officer's findings of fact, but the she had an opportunity to respond to the tenant's evidence at the hearing, which I find she chose not to attend.

The landlord has not provided new evidence to support the allegation that the decision under review was obtained by fraud. The landlord also has not proved any new or newly discovered material facts and how that evidence could have been a significant factor in the making of the decision. The application discloses insufficient evidence that the decision under review was obtained by fraud.

I also find that 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 set aside or varied.

Decision

Due to the above reasons, I find the landlord/applicant has failed to substantiate any of the grounds listed in her review application and **I therefore dismiss the application for Review and confirm the original decision dated December 19, 2011.**

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: January 11, 2012.

Residential Tenancy Branch