



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNDC

Introduction

On October 21, 2012, the Tenants filed an application for dispute resolution in which they made a monetary claim for \$24,000.00 for aggravated damages. The hearing of that matter was held on January 11, 2012 however the Landlord did not attend the hearing and the Tenants were awarded a Monetary Order for \$3,000.00. The Landlord's application for a Review of that Decision was granted January 30, 2012 and the hearing of the Tenants' application was reconvened on February 20, 2012. ***The review decision included an order that within 3 days of receiving the decision, the Landlord must serve each tenant separately with the enclosed notices of the reconvened hearing.*** The review decision also stated that "each party must serve the other and the Residential Tenancy Branch with any and all evidence that they intend to rely upon at the new hearing."

This is an application by the Tenants for a review of the decision rendered by a Dispute Resolution Officer (DRO) at the reconvened hearing on February 20, 2012. In that Decision, the DRO set aside the Decision and Order made January 11, 2012 and dismissed the Tenants' application in its entirety without leave to reapply.

Issues

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 Tenants applied for a review on the 3rd ground.

Facts and Analysis

RTB Policy Guideline #24 (Review consideration of a decision or order) states at p. 2 that,

“a review may be granted if the person applying for the review provides evidence meeting **all three** of the following tests:

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 it.”

The Tenants’ written submissions in support of their review application state as follows:

- On decision dated January 11, 2012, [the] landlord was required to serve applicants separately within 3 days.
- The landlord put an unsigned, typed letter under the windshield wiper of applicant in snowy weather 10 am January 16, 2012.
- Landlord was required to serve us with documents re: time and date of hearing which he did not.
- Tenants were completely unaware of hearing and were not aware none of the evidence used to obtain an order re: ##### would be considered at the February 20, 2012 hearing.

The Tenants provided a copy of the unsigned, typed letter that they claimed they received on January 16, 2012 which, in short, threatened to expose alleged evidence of one or both of them working to the Ministry of Income Assistance and Revenue Canada if they did not pay the Landlord outstanding rent.

Decision

The Decision dated January 11, 2012 *did not* contain an Order requiring the Landlord to serve the Applicants with documents within 3 days. Instead, the Decision issued on January 30, 2012 (reviewing the Decision of January 11, 2012) included an Order requiring the Landlord to serve Notices of the Reconvened Hearing on the Tenants within 3 days of receiving the review decision. The reconvened hearing was held on February 20, 2012 and ***the Tenants attended that hearing***. There is no indication in the Decision dated February 20, 2012 that the Tenants raised any issue with not being served with a copy of the Notice of the Reconvened hearing. Consequently, I conclude that the Tenants were duly served with a copy of the Notice of the Reconvened hearing held on February 20, 2012.

A copy of the Review Decision dated January 30, 2012 was mailed to the Tenants and the Landlord by the Residential Tenancy Branch. The Tenants state in their written submissions that they were aware that this decision contained an Order requiring the Landlord to serve the notices within 3 days. Consequently, I conclude that the Tenants received a copy of the Review Decision dated January 30, 2012 and therefore they should also have known that they were required to serve the Landlord and the Residential Tenancy Branch with a copy of any evidence upon which they were going to rely at the reconvened hearing. The only documentary evidence provided by the Tenants were photocopies of RCMP business cards, and some handwritten journal entries that they had submitted for the original hearing held on January 11, 2012. There is no indication in the Decision that the DRO excluded these documents. In fact, the DRO noted in the Decision dated February 20, 2012 that,

“the Tenants are relying on a photocopy of several business cards of the local police to support their case. The documentation provided by the Tenants was considered when making my decision but it was not helpful. There were no police reports to corroborate their version and I am left with business cards and no explanation.”

In summary, the DRO noted in the Decision dated February 20, 2012 that the Tenants had failed to meet the burden on them to prove their claim because the Landlord's evidence contradicted the Tenants' evidence and the Tenants had provided insufficient **corroborating documentary evidence** (such as police reports).

As a result, I find pursuant to s. 81(1)(b)(ii) that the Tenant's application for review does not disclose sufficient evidence for the ground of review alleged (i.e., fraud) and accordingly it is dismissed without leave to reapply. As a further result, the decision made on February 20, 2012 remains in force and effect. 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: March 20, 2012.

Dispute Resolution Officer