



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC

Introduction

This is an application by the Landlord for a review of a Decision and Order made on February 29, 2012 with respect to the Tenants' application for compensation. The hearing of the Tenants' application was held on February 7, 2012 by conference call however the Landlord did not attend. The Tenants were granted a Monetary Order in the amount of \$1,573.08 for their loss of use of the rental unit while repairs were being made.

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 Landlord applied for a Review on the 2nd and 3rd grounds.

Facts and Analysis

The Landlord's application includes an application for leave to apply late, however, the Landlord said she received the Decision on March 9, 2012 and I find that she filed her Review Application on March 21, 2012, within the 15 day time limit. Consequently, I find that the Landlord does not require leave to apply late for review.

The Landlord claims that she was unable to attend the hearing of the Tenant's application on February 7, 2012 because she had to work. Consequently, the Landlord's submissions state that she now has new and relevant evidence that was not available at the time of the hearing. In particular, the Landlord disputed evidence presented at the hearing by the Tenants regarding the habitability of the rental unit and the payment of

contractors. However, RTB Policy Guideline #24 (Review Consideration of a decision or order) says at p. 2 says as follows:

“New evidence includes evidence that has come into existence since the dispute resolution hearing. It also includes evidence which the applicant could not have discovered with due diligence before the hearing. New evidence does not include evidence that could have been obtained before the hearing took place.”

Given that the repairs in question were done in September and October 2011, I find that the new evidence alluded to by the Landlord, namely a letter from a plumber and contractor receipts, is not new evidence that could not have been obtained by the Landlord before the hearing took place. In other words, the Landlord's failure to attend the hearing is not sufficient reason why she could not collect and supply this evidence prior to the hearing. Consequently, I find that the Landlord cannot succeed on this ground.

The Landlord's submissions also state that having reviewed the Decision, the Landlord believes the Tenants gave false evidence on a number of material matters at the hearing. RTB Policy Guideline #24 says at p. 2-3 as follows:

“Fraud may arise where a witness intentionally provides false evidence....or deliberately misleads the proceeding by concealing a material matter and it is only discovered after.....The Application package must show that the newly discovered and material facts were not known to the applicant at the time of the hearing.”

It is not enough to allege that someone giving evidence for the other side made false statements at the hearing that the Landlord only discovered after the hearing because she did not attend the hearing. In other words, I find that the alleged fraudulent evidence the Landlord claims the Tenants gave at the hearing could have been addressed by the Landlord during the hearing had she attended. Consequently, I find that the Landlord cannot succeed on this ground.

In summary, the Review process is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning could have attended. I find that the Landlord was aware of the hearing and that she could have provided the documentary evidence on which she now relies at the hearing. Furthermore, had the Landlord attended the hearing, she would have had the opportunity to contradict the Tenants' documentary and oral evidence. It is not open to the Landlord to use the Review process as a means to dispute the Tenants' evidence given at the hearing when the Landlord had a full opportunity to participate at that time but chose not to do so.

Decision

In summary, I find that the Landlord's application does not disclose sufficient evidence of a ground for review and as a result, it is dismissed pursuant to s. 81(1)(b)(ii). The decision and Order made on February 29, 2012 remain 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 28, 2012.

Residential Tenancy Branch