



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

APPLICATION for REVIEW

Dispute Codes: FF MNDC

Introduction

This is an application by the Landlord for a review of a decision rendered by a Dispute Resolution Officer (DRO) on March 15, 2012 with respect to an application for Dispute Resolution filed by the Tenant. In a Decision issued on March 15, 2012, the Tenant was granted compensation of \$2,150.00 representing double the amount of rent payable under the tenancy agreement pursuant to s. 51 of the Act (plus the \$50.00 filing fee).

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 1st and 3rd grounds.

Facts and Analysis

RTB Policy Guideline #24 (Review consideration of a Decision or Order) says that in order to be granted a review on the first ground, the applicant must establish that the circumstances that led to his inability to attend the hearing were both beyond his control and could not be anticipated.

The Landlord's written submissions to his review application state that he was unaware of the dispute resolution hearing because he did not receive the Tenant's hearing package. In particular, the Landlord claims that the Tenant sent the hearing package by registered mail to the rental unit address but that he did not reside there at the relevant time. The Landlord claimed that he rented the property to a new tenant effective September 1, 2011 and that he never went there and therefore he never got the registered mail notices. In support of these assertions, the Landlord provided a

copy of a tenancy agreement signed on August 17, 2011 for a six month fixed term commencing September 1, 2011 which purports to be for the whole of the rental property.

I find that the Landlord has provided insufficient evidence to conclude that he did not receive notice of the Tenant's hearing package due to circumstances beyond his control. In particular, the Landlord alleged on the one hand that he was using the rental unit address for his mail (ie. for utility bills) when he resided in the property and therefore I find it unlikely that he would allow mail to continue to go to this address after he moved out without either having it forwarded to a new address or picking it up from time to time. The Tenant provided at the hearing a copy of a Land Title Search dated December 15, 2011 which shows the Landlord's address to be the rental unit address. Consequently I find that the circumstances that led to the Landlord's inability to attend the hearing were not beyond his control but rather due to his failure to collect his mail. Furthermore, the Landlord provided no evidence to corroborate his assertion that he never goes to the rental property even though he claimed there was a Tenant living in the rental property at the relevant time (who would have been able to give this evidence). As a result, I find that the Landlord cannot succeed on this ground of review.

RTB Policy Guideline #24 also says that in order to be granted a review on the third ground, the applicant must provide sufficient evidence with the review application "to show that the information presented at the hearing was false, that the person submitting the information knew that it was false and that the false information was used to get the outcome desired by the person who submitted it."

The Landlord's written submissions to his review application state that the Tenant provided false information that he did not reside in the property after the tenancy ended. The Landlord said he resided in the rental property from late March 2011 until late August 2011 and that as of September 1, 2011 he rented the entire rental property to a new tenant. In support of this assertion, the Landlord provided a copy of a utility invoice in his name dated August 31, 2011 which also has the rental unit address.

I find that the Landlord has provided insufficient evidence to conclude that the Tenant provided fraudulent information at the hearing. The Landlord claimed that he moved into the rental unit at the end of March 2011 and resided there until the end of August 2011. The Landlord provided only one utility invoice as evidence to corroborate this assertion. However, for the 2 month billing period indicated on that invoice (June 28 – August 31, 2011) and for the preceding 2 month period (also shown on the invoice), the amount of electricity used in the whole property was negligible. In other words, the information on the utility invoice appears to corroborate the evidence given by the Tenant at the hearing that the rental property likely was vacant during this four month period of time.

Decision

For all of the above-noted reasons I find pursuant to s. 81(1)(b)(ii) that the Landlord's application for review does not disclose sufficient evidence of a ground for review. Consequently, the decision and Order made on March 15, 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: April 02, 2012.

Residential Tenancy Branch