



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC FF

Introduction

On May 10, 2012 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 May 10, 2012.

That decision granted the notice to be set aside. The landlord did not request an extension of time to apply for Review Consideration.

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 submits in her Application for Review Consideration that she was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond her control; that she has new and relevant evidence that was not available at the time of the original hearing; and she has evidence that the director's decision was obtained by fraud.

Issues

It must first be determined if the landlord has submitted her Application for Review Consideration within the legislated time frames required for reviews.

If the landlord has submitted her Application within the required time frames it must be decided whether the landlord is entitled to have the decision of May 10, 2012 suspended with a new hearing granted because she has provided sufficient evidence to establish that she was unable to attend the hearing for unexpected reasons that were beyond her control; she has new and relevant evidence that was not available at the time of the original hearing; or she has evidence the tenant obtained the decision based on fraud.

Facts and Analysis

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 5 days after a copy of the decision or order is received by the party, if the decision relates to a notice to end tenancy under Section 49 of the *Act*.

From the landlord's submission I accept the landlord received the decision on May 22, 2012 and that she filed his Application for Review Consideration on May 23, 2012. As such, I find the landlord has filed her Application within the required legislated deadlines.

The landlord submits that she had never been informed of the dispute or hearing. From the decision of May 10, 2012 DRO XXXXX wrote: "The tenant testified that he served the application for dispute resolution and the notice of hearing in person on the landlord, however, he could not recall the exact date when this was done."

As the decision does not indicate the tenant had any corroborating evidence or any witness of the service of his Application and hearing documents and in light of the fact the decision notes the tenant could not recall a date that he had served the landlord, I accept the landlord's position that she was not informed of the Application or hearing.

For this reason, I find the landlord has established that she was unable to attend the hearing for unexpected reasons that were beyond her control and I grant a new hearing. As I have made this finding, I make no findings on the other grounds for the landlord's Application for Review Consideration.

Decision

For the reasons noted above, I find the landlord has established sufficient grounds for a new hearing on these matters. Details of the new hearing are included with the landlord's copy of this decision. The landlord **must serve the tenant within 3 days** of receiving this decision with a copy of this decision and the Notice of Hearing documents.

While the tenant has provided a different address on the original Application for Dispute Resolution as his preferred address for service, it is not clear whether or not the landlord has that address and as such, I order the landlord may serve the tenant any relevant documents to the dispute address.

The decision made on May 10, 2012 is suspended until such time as the new hearing has been completed and a decision is given to the parties, in accordance with Section 81(3).

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: May 31, 2012.

Residential Tenancy Branch