



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR

Introduction

On April 23, 2012 Dispute Resolution Officer (DRO) XXXXX provided a decision on the landlords' Application for Dispute Resolution seeking a monetary order for unpaid rent and for money owed as a result of the tenancy.

Based on the evidence and testimony before him XXXXX dismissed the landlords' Application, without leave to reapply.

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 the Application for Review Consideration that he has new and relevant evidence that was not available at the time of the original hearing and that he has evidence that the decision was obtained by fraud.

Issues

The issue to be decided is whether the landlord is entitled to have the decision of April 23, 2012 suspended and a new hearing granted because the landlord has provided sufficient evidence to establish he has new and relevant evidence that was not available at the time of the original hearing and/or he has evidence the decision was obtained by fraud.

Facts and Analysis

The landlord submits in his Application for Review Consideration that he received a letter from the person he asserts was living in the rental unit with the tenant a week prior to the hearing; that he did not have time to read it before the hearing and that it was also not available at the hearing.

Despite the landlord's claim that he did not have time to read the letter – I find it unlikely that a party to a dispute would fail to take the time to read new evidence prior to a hearing when he knew a hearing was coming up within a week.

Further, I note that a copy of this letter was on the original file and was received by the Residential Tenancy Branch on April 12, 2012 and while not specifically referenced in his decision, I find that it is likely that this letter was considered by DRO XXXX in his original decision.

In addition, the landlord clearly states that he had the letter prior to the hearing I find the landlord has failed to establish that this evidence is new in that he had it prior to the hearing. For these reasons I find the evidence submitted by the landlord in his Application for Review Consideration is not new evidence and the landlord could have provided testimony to its content at the original hearing.

While the landlord submits the tenant obtained the decision by fraud he only submits responses to refute DRO XXXX's findings in relation to evidence and testimony that was before the DRO at the time of the original hearing.

The landlord submits, for example, that the other party stayed in the rental unit for 53 days over the period of 10 months. In the decision DRO XXXXX writes: "The tenant provided a list of dates when JL stayed in the rental unit. This list included 30 overnight stays in 2009 and 23 overnight stays in 2010." It is clear from that passage that the DRO considered this evidence and found that the JL only provided some respite care assistance to the tenant but resided elsewhere.

The landlord has provided no additional evidence of how he came to believe this evidence or testimony provided by the tenant was fraudulent, and if it was fraudulent how the tenant knew it to be so.

Based on the above, I find the landlord is attempting through the review process to reargue his claim and has failed to establish grounds for a new hearing.

Decision

For the reasons noted above, I dismiss the landlords' Application for Review Consideration.

The decision made on April 23, 2012 stands.

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 22, 2012.

Residential Tenancy Branch