



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNSD

Introduction

This is an application filed by the landlord on May 23, 2012 for review of a Dispute Resolution Officer decision and order dated May 4, 2012 on the above noted matter.

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.

Issues

In this application the landlord relies on the second and third grounds; new and relevant evidence, and evidence that the director's decision was obtained by fraud.

Facts and Analysis

The landlord provided a five page request for review that was broken into multiple paragraphs under a "Correction/Clarification/Review" heading with the exception of two identified as "New Evidence/ Review".

The landlord may not have recognized the distinction between an application for review consideration and a request for correction or clarification. Under this application, a Dispute Resolution Officer may review a decision or order on the three grounds stated above. A request for correction or clarification needs to be submitted on a different form to accommodate a different process that allows the Dispute Resolution Officer who wrote the original decision or order to deal with a typographical, grammatical, or mathematical error, to deal with an obvious error or inadvertent omission, or to clarify the decision or order. In any event, none of these two processes are an opportunity to re-argue the case.

With this in mind, under this application I will address the two relevant paragraphs that deal with new evidence.

In one paragraph the landlord states that as she went through her former tenants' file, she found further evidence to support her claim that she always asked her tenants to sign for damages.

In the other paragraph the landlord states that her previously submitted evidence proves the tenants' pattern of irresponsible behaviour. She also states in part that the tenants' inability to produce deposit receipts is consistent with their inability to produce the incoming inspection report.

Residential Tenancy Policy Guideline #24 addresses the grounds for review. Concerning new and relevant evidence the guideline states in part:

It is up to a party to prepare for a dispute resolution hearing as fully as possible. Parties should collect and supply all relevant evidence to the dispute resolution hearing. "Evidence" refers to any oral statement, document or thing that is introduced to prove or disprove a fact in a hearing...

Evidence which was in existence at the time of the original hearing, and which was not presented by the party, will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through taking reasonable steps, have become aware of the evidence.

"New" evidence includes evidence that has come into existence since the 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, such as photographs that could have been taken or affidavits that could have been sworn before the hearing took place.

In order to be considered new, the applicant must prove that:

- The evidence was not available at the time of the original hearing.
- The evidence is new.
- The evidence is relevant to the matter which is before the Dispute Resolution Officer.
- The evidence is credible.
- The evidence would have a material effect on the decision.

I do not find that the landlord's submissions can be characterized as new evidence; it was dated prior to the date of the original hearing, and the landlord provides no explanation as to why it was not available at the time of the hearing. An absence of awareness of submitting evidence that could be potentially relevant is not sufficient to argue the grounds of new and relevant evidence.

For the above noted reasons I find that the landlord's submissions do not meet the criteria for new and relevant evidence.

The landlord did not provide any submissions concerning fraud therefore I make no findings on this ground.

To put a closure on the landlord's arguments concerning the security deposit, Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing. Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

In this matter the landlord received the tenants' forwarding address, but the security deposit was not returned and the landlord did not apply for dispute resolution on time as required by statute. Section 81 of the Act provides in part that the director may dismiss or refuse to consider an application for review if the application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied. Therefore on this issue alone I find that the landlord has not provided sufficient grounds to grant a review.

Concerning the landlord's submissions for correction or clarification, I have no authority to address this aspect of the landlord's application. The landlord is at liberty to submit a proper request to the Residential Tenancy Branch for the original Dispute Resolution Officer's consideration.

Decision

The landlord's application is dismissed. The decision made on May 4, 2012 is hereby dismissed.

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 30, 2012.

Residential Tenancy Branch