



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78., as amended.

On July 3, 2012, the Residential Tenancy Branch received an Application for Review from XXXXXXXX, Tenant(s).

Subject:

File Number: XXXXXXXX,
Decision dated: June 18, 2012
Rental Unit: XXXXXXXX,
XXXXXX, BC

Other Party: XXXXXXXX, Landlord(s),

Introduction

On June 18, 2012 Dispute Resolution Officer (DRO) XXXXXXXX provided a decision on the landlord's Application for Dispute Resolution seeking to an order of possession and a monetary order. The hearing had been conducted on June 18, 2012.

That decision granted an order of possession and a monetary order in the amount of \$767.62 for unpaid rent and utilities and to recover the filing fee for the landlord's Application less the security deposit. The tenant did 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 tenant submits in the Application for Review Consideration that the tenant has evidence that the director's decision was obtained by fraud.

Issues

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

If the tenant has submitted the Application within the required time frames it must be decided whether the tenant is entitled to have the decision and order of June 18, 2012 suspended with a new hearing granted because the tenant has provided sufficient evidence to establish that the landlord 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 2 days after a copy of the decision or order is received by the party, if the decision relates to a matter of possession of the rental unit.

From the decision of June 18, 2012 the issues before the DRO were related to the landlord's application for an order of possession. As such, I find the decision and order the tenant is currently requesting a review on does relate to an order of possession and as such the tenant was allowed 2 days to file the Application for Review Consideration.

The tenant indicates that the decisions and order were received the June 18, 2012 decision and order on June 26, 2012 and filed their Application for Review Consideration with the Residential Tenancy Branch on June 29, 2012. The tenant filed the Application for Review Consideration on July 3, 2012. I find the tenant has not filed the Application for Review Consideration within the required timelines.

The tenant submitted in the Application for Review Consideration that there was no unpaid rent or utilities at all because the landlord had agreed to the non-payment of rent. From the decision the DRO wrote: The landlord testified that the rent has not been paid for the month of May 2012 in the sum of \$1,100.00 nor have the tenant's share of utilities in the sum of \$167.62 been paid. The tenant agrees she has not paid these sums."

As such, even if the tenant had submitted the Application for Review Consideration within the required deadline, I find the tenant had the opportunity to provide evidence and testimony at the time of the hearing. The tenant agreed that rent and utilities had not been paid; the tenant cannot submit now that there was any alternate agreement; this testimony and evidence should have been submitted at the hearing.

As to the tenant's claims in the Application for Review Consideration that there had been no disturbances and that police were not called to the unit because of the tenant at any time, I find that this evidence and testimony was not relevant to the outcome of either the landlord's Application for the order of possession or the monetary order.

Decision

For the reasons noted above, I find the tenant has failed to establish the landlord obtained the order or decision by fraud and I dismiss the Application for Review Consideration.

The decision made on June 18, 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: July 09, 2012.

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Residential Tenancy Branch