



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC MNSD

Introduction

On July 23, 2012 Dispute Resolution Officer (DRO) XXXXX provided a decision on the landlords' Application for Dispute Resolution seeking compensation for damage to the rental unit. The hearing had been conducted on July 19, 2012.

That decision dismissed the majority of the landlord's claim, including the landlords' claim to replace carpeting. 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 landlords submit in their Application for Review Consideration that that they have new and relevant evidence that was not available at the time of the original hearing.

Issues

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

If the landlords have submitted their Application within the required time frames it must be decided whether the landlords are entitled to have the decision of July 23, 2012 suspended with a new hearing granted because they have provided sufficient evidence to establish that they have new and relevant evidence that was not available at the time of the original hearing.

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 15 days after a copy of the decision or order is received by the party, if the decision does not relate to a matter of possession of the rental unit; a notice to end tenancy; withholding consent to sublet; repairs or maintenance or services and facilities.

From the decision of July 23, 2012 the issues before the DRO were related to the landlords' claim for damages. As such, I find the decision and order the landlords are currently requesting a review on do not relate to the matters identified above and as such the landlords were allowed 15 days to file their Application for Review Consideration.

From the landlords' submission they indicate that they received the July 23, 2012 decision on July 27, 2012 and filed their Application for Review Consideration with the Residential Tenancy Branch on August 8, 2012 (11 days after receipt of the decision and order). I find the landlords have filed their Application for Review Consideration within the required timelines.

The landlords state in their Application for Review Consideration that "photos were not accessible from cell phone. Phoned provider for instructions to access and purchase program. Photos for damaged carpet, doors & vents." The landlords provide no explanation as to why these steps were not taken prior to the hearing in order to provide the evidence at the time of the hearing.

Residential Tenancy Policy Guideline 24 states: "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. Evidence in existence at the time of the original hearing 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."

From the landlords' submission, I find the landlords have failed to provide sufficient evidence that they could not have obtained prints of these photographs prior to the hearing by taking the exact same steps they did after the hearing to enable them to print the photographs.

Decision

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

The decision made on July 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: August 14, 2012.

Residential Tenancy Branch