



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNR

Introduction

On July 31, 2012 Dispute Resolution Officer (DRO) XXXXXX provided a decision on the landlord's Application for Dispute Resolution seeking to a monetary order for damage to the rental unit and unpaid rent. The hearing had been conducted on July 31, 2012.

That decision dismissed the landlord's Application without leave to reapply. The landlord did not request an extension of time to apply for Review Consideration.

Division 2, Section 79(2) under the *Residential Tenancy Act (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.

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 July 31, 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.

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 Application for Dispute Resolution submitted by the landlord on June 4, 2012 the issues before the DRO were related to the landlord's claim for damage to the rental unit and unpaid rent. As such, I find the decision the landlord is currently requesting a review on does not relate to the matters identified above and as such the landlord was allowed 15 days to file her Application for Review Consideration.

From the landlord's submission she indicates that she received the July 31, 2012 decision on July 31, 2012 and filed their Application for Review Consideration with the Residential Tenancy Branch on July 31, 2012 (the day she received the decision). I find the landlord has filed her Application for Review Consideration within the required timelines.

Section 81 of the *Act* states the Application for Review may be refused or dismissed if the Application for Review:

1. Does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
2. Does not disclose sufficient evidence of a ground for the review;
3. 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; or
4. Is frivolous or an abuse of process.

The landlord submits in her Application for Review Consideration that she had difficulty calling into the hearing and that she finally realized that she was using an incorrect access code and at 1:06 she called the phone number again and spoke with an operator at 1:12 who connected her to the hearing. The landlord submits that she stayed on the line for 25 minutes and no one ever joined her.

The landlord has provided no evidence to support that her claim that she had either attempted to join the conference call hearing or that she eventually gained access to the conference call and remained on line for 25 minutes. Further the landlord has not provided any information in the Application for Review Consideration as to what testimony or additional evidence would have been provided if she was at the hearing. In fact the landlord has crossed out this specific question on the Application and provided no response.

As such, I find the landlord has failed to provide sufficient evidence to establish that she was unable to attend the hearing for unanticipated reasons that were beyond her control and has failed to disclose any basis for which the decision should be varied or set aside, even if a new hearing or reconvened hearing were to be granted.

Decision

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

The decision made on July 31, 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 09, 2012.

Residential Tenancy Branch