



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute codes: AAT CNC MNDC OLC

### Introduction

On August 7, 2012 Dispute Resolution Officer (DRO) XXXXXX provided a decision on the tenant's Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause; compensation for damage or loss; an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; to set conditions or suspend the landlord's right to access the rental unit; and an order to allow access to or from the unit for the tenant or the tenant's guests. The hearing had been conducted on August 7, 2012.

That decision granted the notice to be set aside and dismissed all other claims by the tenant.

Division 2, Section 79(2) under the *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 that she has new and relevant evidence that was not available at the time of the original hearing. The landlord did not request an extension of time to apply for Review Consideration.

### 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 August 7, 2012 suspended with a new hearing granted because she has provided sufficient evidence to establish that she has 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 within 5 days after a copy of the decision is received by the party, if the decision relates to a notice to end tenancy for any reason other than non-payment of rent.

From the decision of August 7, 2012 the issues before the DRO were related, at least in part, to a 1 Month Notice to End Tenancy for Cause. As such, I find the decision the landlord is currently requesting a review on allows the landlord 5 days to file her Application for Review Consideration.

From the landlord's submission she indicates that she received the August 7, 2012 decision on August 10, 2012 and filed her Application for Review Consideration with the Residential Tenancy Branch on August 15, 2012 (5 days after receipt of the decision). I find the landlord has filed her Application for Review Consideration within the required timelines.

The landlord submits in her Application for Review Consideration that she is: "attaching photos of male living in suite covering up the surveillance camera, stealing bike, had the understanding the dispute was only in regards to doing an inspection as the tenant had only filed for this cause. Security Report 2 males from apt 219".

The landlord also submitted a letter explaining that she understood that the tenant's application only involved the issue of an inspection and not the 1 Month Notice. The landlord goes on to say that had she known the hearing was also about the 1 Month Notice she would have supplied photographs of the male occupant in the tenant's unit.

In support of her Application for Review Consideration that landlord has provided a copy of the tenant's Application for Dispute Resolution. In the tenant's Application the tenant has checked off the boxes relating to the following disputes:

1. Cancel a Notice to End Tenancy issued for the following reason: Cause;

2. A monetary order for the following reason: Money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
3. Landlord's action sought – comply with the Act, regulation or tenancy agreement;
4. Landlord's action sought – suspend or set conditions on the landlord's right to enter the rental unit;
5. Tenant's action sought – allow access to (or from) the unit or site for the tenant or the tenant's guests.

The landlord has also submitted a letter from the tenant dated July 25, 2012 in response to the landlord's notice of July 24, 2012 requesting the unit be cleaned and emptied of all clutter. In this letter the tenant states: "Your implied threat to give me a 1 Month's Notice to End Tenancy for Cause if I don't comply is redundant, considering you already gave me a 30-day Notice to End Tenancy on July 5, 2012. We have a Dispute Resolution Hearing on August 7, 2012, to deal with it."

I also note that the DRO noted in the decision of August 7, 2012 that "the landlord stated that she was in the process of obtaining some video and police evidence to support her position however at the time of today's hearing that information/evidence was not submitted."

No explanation was provided as to why this evidence was not available at the time of the hearing. There is no notation in the August 7, 2012 decision that the landlord had raised any concern that she was not informed of the intention of the tenant to dispute the 1 Month Notice to End Tenancy for Cause.

The landlord has provided a photograph of a notice on the tenant's door dated July 5, 2012; two site reports with the property name on the reports – one dated June 23, 2012 and one dated July 30, 2012; several surveillance photographs taken June 20 and 21, 2012.

The landlord has provided no explanation as to why these materials were not available at the time of the hearing and they all appear to be internal items generated at the control of the landlord.

If the landlord contends that she did not submit the evidence because she did not understand that the hearing would be dealing with the Notice to End Tenancy, I find a what a party understands of the claim against them and what they chose to present as evidence does not have any implication on whether or not the evidence was available.

In the case before me I find the evidence was clearly available to the landlord and in addition the landlord had received a copy of the tenant's Application for Dispute Resolution and the tenant's letter of July 25, 2012 that both clearly indicate that at least part of the hearing would be dealing with the Notice to End Tenancy. I find it unlikely that the landlord was unaware of the tenant's intention to dispute the Notice.

Therefore, I find the landlord has failed to establish that she has new and relevant evidence that was not available at the time of the original hearing.

### Decision

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

The decision made on August 7, 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 17, 2012.

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Residential Tenancy Branch