



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC

Introduction

On September 11, 2012 Dispute Resolution Officer (DRO) XXXXXXXX provided a decision on the tenant's Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause. The hearing had been conducted on September 11, 2012.

That decision granted the notice to be set aside. 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 landlord submits in his Application for Review Consideration that he has new and relevant evidence that was not available at the time of the original hearing; and he has evidence that the director's decision was obtained by fraud.

Issues

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

If the landlord has submitted his Application within the required time frames it must be decided whether the landlord is entitled to have the decision of September 11, 2012 suspended with a new hearing granted because he has provided sufficient evidence to establish that he has new and relevant evidence that was not available at the time of the original hearing or the tenant 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 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 September 11, 2012 the issues before the DRO were a 1 Month Notice to End Tenancy for Cause. As such, I find the decision the landlord is currently requesting a review on allows 5 days to file an Application for Review Consideration.

From the landlord's submission he indicates that he received the September 11, 2012 decision on September 14, 2012 and filed his Application for Review Consideration with the Residential Tenancy Branch on September 19, 2012 (5 days after receipt of the decision). I find the landlord filed his Application for Review Consideration within the required timelines.

The landlord submits that he has 2 pieces of new and relevant evidence that was not available at the time of the hearing. The landlord has included in his Application for Review Consideration a copy of the tenancy agreement and a copy of his advertisement that ran between April 2, 2012 and May 1, 2012 for the rental unit.

In regard to the tenancy agreement the landlord submits that it was not available at the time of the original hearing because he thought he had included it in his evidence package. I find that failure to submit or the belief that you have submitted documentary evidence to a hearing does not make the evidence new or not available at the time of the original hearing.

In relation to the advertisement provided with his Application for Review Consideration the landlord indicates that he thought that his handwritten submission of the advertisement was sufficient for the purposes of the hearing. I find a choice made by a party on what is sufficient evidence does not render an alternate form of that evidence to be considered new or not available at the time of the original hearing.

For these reasons, I find the landlord has failed to establish that he has new and relevant that was not available at the time of the original hearing.

While the landlord submits the decision was obtained by fraud, he provides no evidence to establish there was fraud and it appears that each of the items the landlord suggest were fraudulent are arguments that he could have made during the hearing. A Review Consideration is not an opportunity to reargue the case. I find the landlord has failed to provide any evidence to establish the decision was obtained by fraud.

While the landlord states in the section on fraud in his Application for Review Consideration that the third party had moved back into the rental unit, he provides no evidence of this claim. If he had provided some form of evidence to support this claim it may have been considered new and relevant evidence. However, in the absence of

any evidence to substantiate the claim, I find the landlord has not established new evidence or fraud.

Decision

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

The decision made on September 11, 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: September 27, 2012.

Residential Tenancy Branch