



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR MNSD O

Introduction

On August 29, 2012 Dispute Resolution Officer (DRO) XXXXX provided a decision on the landlords' Application for Dispute Resolution seeking a monetary order for unpaid rent. The hearing had been conducted on August 29, 2012.

That decision dismissed the landlords' monetary claim with leave to reapply. The decision also noted that the landlords stated in the hearing that they had applied for an order of possession; however the DRO determined that the landlords had not applied for an order of possession and advised the landlords they could make a separate Application for Dispute Resolution seeking an order of possession. The landlords 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 they have evidence that the director's decision was obtained by fraud.

Issues

It must first be determined if the landlords have 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 August 29, 2012 suspended with a new hearing granted because they have provided sufficient evidence to establish that the decision was obtained 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 15 days after a copy of the decision 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 August 29, 2012 the issues before the DRO were related to the landlord's monetary claim for unpaid rent. As such, I find the decision the landlords are currently requesting a review on do 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 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 August 29, 2012 decision on August 29, 2012 and filed their Application for Review Consideration with the Residential Tenancy Branch on August 31, 2012 (2 days after receipt of the decision). I find the landlords have filed their Application for Review Consideration within the required timelines.

The landlords submit in their Application for Review Consideration:

"The Landlord's Application for Dispute Resolution (p.2) held by the residential tenancy branch is false. The applicant did not make the change on the last box below Reason for ending tenancy and this change was made after the document was date stamped by the Residential Tenancy Branch.

The Landlord's Application for Dispute Resolution held by the Landlord and the Landlord's Application for Dispute Resolution delivered to the tenant are true."

The landlord also submits that the change on page 2 was after the Application was submitted to the Residential Tenancy Branch (RTB) by "someone other than the applicant."

The landlords have also provided, in their Application for Review Consideration, a letter signed by a woman with the same last name as the landlord but a different first name and a different signature than that of the landlord on both the Application for Dispute Resolution and the Application for Review Consideration.

For the purposes of this decision the writer of the letter will be referred to as RS(1) and her husband as RS(2) (both first names begin with R) and the landlords are ES and HS.

In the letter, the writer states:

"My name is [RS(1)] and I attended the Residential Tenancy Branch in Burnaby, BC to apply for an Order of Possession. I have reviewed the document that you faxed to my husband, [RS], this afternoon during the hearing that we scheduled

for today one month ago. On Page 2 my initials are contained in 2 locations next to 1300.00 and above the crossed out June. The initial next to the last box below Reason for ending tenancy is not mine.

I have attached the copy you sent to my husband for your ease of reference with the initial that is not mine circled and initialed by me. In light of this evidence I hope you can reconsider your decision.

The landlord who signed the original Application for Dispute Resolution and the Application for Review Consideration was ES, as such I am unclear as to why RS(1)'s would submit that they were not her initials, as she was not a party to the dispute.

Residential Tenancy Policy Guideline 24 states that:

"Fraud is the intentional use of false information to obtain a desired outcome. Fraud must be intended. An unintended negligent act or omission is not fraudulent.

Intentionally providing false testimony would constitute fraud, as would making changes to a document either to add or to remove information rendering the document false."

As the landlords have not identified anyone in particular who may have altered the document and they have not provided any evidence or submission in relation to the alteration being made as an intentional use of false information to obtain a desired outcome, I find the landlords have failed to establish the decision was obtained based on fraud.

I note that the landlords were granted leave to reapply in relation to the monetary claim and since the DRO determined the landlord had not applied for an order of possession, the landlord remains at liberty to file an Application for Dispute Resolution to seek such an order.

Decision

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

The decision made on August 29, 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 14, 2012.

Residential Tenancy Branch