



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

Introduction

On September 6, 2012, 2012 Dispute Resolution Officer (DRO) XXXXX provided a decision on the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order for unpaid rent. The matter was adjudicated the *ex parte* Direct Request process on September 6, 2012.

That decision granted landlord an order of possession and a monetary order in the amount of \$925.00. The tenant 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 tenant submits in her Application for Review Consideration that she has evidence that the director's decision was obtained by fraud.

Issues

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

If the tenant has submitted her Application within the required time frames it must be decided whether the tenant is entitled to have the decision and orders of September 6, 2012 suspended with a new hearing granted because she has provided sufficient evidence to establish that the landlord 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 2 days after a copy of the decision or order is

received by the party, if the decision relates to an order of possession or to a landlord's notice to end tenancy for non-payment of rent.

From the decision of September 6, 2012 the issues before the DRO were related to the landlord's notice to end tenancy for non-payment of rent. As such, I find the decision and order the tenant is currently requesting a review on allows the tenant 2 days to file her Application for Review Consideration.

From the tenant's submission she indicates that she received the September 6, 2012 decision and order on September 6, 2012 and filed their Application for Review Consideration with the Residential Tenancy Branch on September 7, 2012 (1 day after receipt of the decision and order). I find the tenant has filed their Application for Review Consideration within the required timelines.

The tenant submits that she did not receive a 10 Day Notice to End Tenancy for Unpaid Rent and was therefore not aware the landlord was seeking to end the tenancy. While the tenant is silent, in her Application for Review Consideration, as to whether or not she paid rent for the month of August, 2012 I accept that if she did not receive a Notice to End Tenancy the landlord *may* not have served the tenant with one.

When a landlord serves a document that requires service in a prescribed manner pursuant to the *Act*, the receipt of that document is presumed to have occurred within certain time limitations, dependent on the method of service.

While I make no finding of fraud; as the Direct Request process does not include an opportunity for the DRO to question either of the parties; and because receipt of a served document is a rebuttable presumption, I find the tenant has raised sufficient question as to receipt of the notice to end tenancy sufficiently to warrant a new hearing.

Decision

For the reasons noted above, I find the tenant has established sufficient grounds for a new hearing on these matters. Details of the new hearing are included with the tenant's copy of this decision. The tenant **must serve the landlord within 3 days** of receiving this decision with a copy of this decision and the Notice of Hearing documents.

The decision made on September 6, 2012 is suspended until such time as the new hearing has been completed and a decision is given to the parties, in accordance with Section 81(3).

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 24, 2012.

Residential Tenancy Branch