



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC MNSD

Introduction

On August 29, 2012 Dispute Resolution Officer (DRO) XXXXXX provided a decision on cross Applications for Dispute Resolution with both parties seeking to monetary orders. The hearing had been conducted on August 29, 2012.

That decision granted the tenants return of double the amount of the security deposit and dismissed the landlord's Application. 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 their Application for Review Consideration that they have new and relevant evidence that was not available at the time of the original hearing; and they have evidence that the director's decision was obtained by fraud.

Issues

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

If the landlord has submitted their Application within the required time frames it must be decided whether the landlord is entitled to have the decision and order of August 29, 2012 suspended with a new hearing granted because they have provided sufficient

evidence to establish that they have 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 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 decision of August 29, 2012 the issues before the DRO were related to the landlord's claim for damages; compensation for damage or loss; and to retain the security deposit. As such, I find the decision and order the landlord is currently requesting a review on do not relate to a matter of possession; a notice to end tenancy; withholding consent to sublet; repairs or maintenance; or services or facilities and as such the landlord was allowed 15 days to file their Application for Review Consideration.

From the landlord's submission they indicate that they received the August 29, 2012 decision and order on September 10, 2012 and filed their Application for Review Consideration with the Residential Tenancy Branch on September 17, 2012 (7 days after receipt of the decision and order). I find the landlord has filed their Application for Review Consideration within the required timelines.

The landlord submits that they have evidence to establish the tenant's had a 3rd person living in the rental unit despite the tenancy agreement stipulating that only 2 people were allowed to be living in the unit.

The landlord submits this evidence is:

1. Relevant because the tenants did not inform the landlord or the RTB of the 3rd person living there even though they knew the tenancy agreement stated 2 tenants only;
2. The signed note is relevant because it confirms there was another person living in the rental unit;
3. The new photos are relevant because they prove that there was "bedding for sleeping on the dining room floor"; and
4. The listing is relevant because it proves there was bedding on the dining room floor when the rental unit was listed for sale which resulted in a "negative effect on prospective buyers."

The landlord submits the decision and order were obtained by fraud because the tenants failed to tell them about the 3rd person living there as they would have raised the rent by \$400.00 and as such they feel they have suffered a loss of \$3,200.00 in rental income.

The landlord submits that they did not have this evidence at the time of the hearing because they first learned about the possible 3rd occupant after they returned from being away on August 31, 2012.

I note from the landlord's original Application for Dispute Resolution outlined that the landlord was seeking a monetary order in the amount of \$1,381.39 and broke that claim down as follows: paint - \$840.00; towel bar and parking stall cleaning - \$152.29; house cleaning - \$137.50; carpet repair - \$112.00; carpet cleaning - \$89.60; and filing fee of \$50.00.

From the Application for Dispute Resolution and from the decision, I find that the issues considered by the DRO were related solely to physical damage to the rental unit and not for compensation related to a breach of any of the terms of the tenancy agreement regarding the number of tenants and as such, the new evidence submitted by the landlord has no relevance to the decision or order.

In relation to the landlord's claim of fraud, again the issue the landlord is raising as fraud was not part of their original Application for Dispute Resolution and as such was not considered in the decision and order of August 29, 2012.

As these matters were not considered by the DRO or were even a part of the landlord's original Application for Dispute Resolution the landlord has failed to establish any grounds for review.

However, if the landlord believes they have suffered a loss as a result of a breach of the tenancy agreement on the issues outlined in their Application for Review Consideration and since these matters have not been adjudicated, the landlord remains at liberty to file a new and separate Application for Dispute Resolution seeking compensation for those specific breaches and losses.

Decision

Based on the above, I dismiss the landlord's 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 26, 2012.

Residential Tenancy Branch