



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC OPC

Introduction

This is an application by the Tenants for a Review of a Decision and Order rendered by a Dispute Resolution Officer (DRO) on August 27, 2012 with respect to an application filed by the Landlords for an Order of Possession and for compensation for Strata By-Law fines allegedly incurred by the Tenants and an application filed by the Tenants to cancel the One Month Notice to End Tenancy for Cause. The Tenants did not attend the hearing via conference call and an Order of Possession effective August 31, 2012 and Monetary Order for \$650.00 were granted to the Landlords representing the compensation claimed as well as the filing fee.

Issues

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 Tenants applied for a Review of the Decision and Orders on the 1st and 2nd grounds.

Facts and Analysis

In their written submissions in support of the first ground of their application, the Tenants claim that they tried to dial into the conference call but were unable to access it. According to a conference summary report from Telus Conferencing, the Dispute Resolution Officer and Landlords dialled into the conference call at 1:00 p.m. (as scheduled and noted on the Parties' Notices of Hearing) and the conference call ended at 1:22 p.m. The Conference summary report also shows that the Tenants did not dial into the conference call until 1:26 p.m., or 4 minutes after the hearing ended.

RTB Policy Guideline #24 (Review of a Decision or Order) says at p. 1,

“In order to meet this test, the application and supporting evidence must establish that the circumstances which led to the inability to attend the hearing were both beyond the control of the applicant and could not be anticipated.”

A dispute resolution hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning could have attended.”

I find that the Tenants have provided insufficient evidence (such as telephone records) to conclude that they tried to dial into the conference call at the scheduled time. Instead, the available evidence suggests that the Tenants were unable to access the conference call because they dialled in after the hearing ended. Consequently, I find that the Tenants are unable to succeed on this ground of their Review application.

In the written submissions in support of the second ground of their application, the Tenants claim that the Landlords named in their and the Landlords' application were only authorized to act on behalf of the rental property owner to place them and was acting contrary to the intention of the property owner who did not wish to end their tenancy. The Tenants also argued that they had arranged for a hearing before the Strata Council of the rental property to dispute the three Strata fines in question although a hearing had not yet been scheduled. In support of their submissions, the Tenants provided an e-mail to the property owner dated June 29, 2012 regarding one of the Strata fines and an e-mail from the Strata to the Tenants dated July 3, 2012 stating that it would confirm a date and time for a hearing into this fine and some other of the Tenants' complaints.

RTB Policy Guideline #24 says at p. 2 as follows:

“New evidence includes evidence that has come into existence since the dispute resolution hearing. It also includes evidence which the applicant could not have discovered with due diligence before the hearing. New evidence does not include evidence that could have been obtained, such as photographs that could have been obtained before the hearing took place.”

The Tenants have provided no evidence from the owner of the rental property (or at all) in support of their allegation that the Landlords were not authorized by the property owner to end their tenancy or to pursue an application to recover compensation for three Strata fines.

I also find that the e-mail from the Strata dated July 3, 2012 does not constitute new evidence that was not available at the time of the hearing but instead find that it was in existence and in the possession of the Tenants at the time of the hearing and would likely have been relied on by the Tenants had they attended the hearing. Furthermore, there is no evidence that the Strata fines have or will be revoked. Should the Tenants

be successful in having the Strata fines revoked, they may ***then*** make an application for Dispute Resolution to recover that amount from the Landlords or property owner as the case may be.

Decision

The Tenants' application for Review is dismissed pursuant to s. 81(b)(ii) on the grounds that it does not disclose sufficient evidence of a ground for the review. Consequently, the Decision and Orders made on August 27, 2012 remain in force and effect.

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 25, 2012.

Residential Tenancy Branch