



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNR ERP LRE MNDC MNR OLC RP RR

Introduction

On October 1, 2012 Dispute Resolution Officer (DRO) XXXXXXXX provided a decision on the tenants' Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; for a monetary order for emergency repairs completed; to have the landlord make repairs and emergency repairs to the rental unit; to suspend or set conditions on the landlord's right to enter the rental unit and to reduce rent for repairs not provided. The hearing had been conducted on October 1, 2012.

That decision severed the Application for Dispute Resolution, dismissing the tenant's monetary claim with leave to reapply under a separate Application and dismissing, without leave to reapply, the portion of the tenant's Application for Dispute Resolution seeking to cancel the 10 Day Notice to End Tenancy because the tenants had filed their Application for Dispute Resolution or pay the outstanding rent within 5 days of receipt of the Notice. 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 new and relevant evidence that was not available at the time of the original hearing; and 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 order of October 1, 2012 suspended

with a new hearing granted because she has provided sufficient evidence to establish that she has new and relevant evidence that was not available at the time of the original hearing; or 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 order is received by the party, if the order relates to a landlord's notice to end tenancy for non-payment of rent.

From the order and decision of October 1, 2012 the issues before the DRO were a notice to end tenancy for unpaid rent. As such, I find the order the tenant is currently requesting a review on was allowed 2 days to file their Application for Review Consideration.

From the tenant's submission she indicates that she received the October 1, 2012 decision and order on Friday, October 5, 2012 and filed her Application for Review Consideration with the Residential Tenancy Branch on Tuesday, October 9, 2012 (1 business day after receipt of the decision and order, as the Residential Tenancy Branch had been closed for a long weekend). I find the tenant has filed her Application for Review Consideration within the required timelines.

The tenant has submitted a copy of an invoice referred to in the hearing and states that she did not know the location of the invoice until after the hearing. The tenant does not indicate any reason as to why the evidence was not provided prior to the original hearing. Residential Tenancy Policy Guideline 24 states:

“Evidence in existence at the time of the original hearing which was not presented by the party will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through taking reasonable steps, have become aware of it.”

As the tenant has failed to show how this evidence is new in accordance with the above guideline, I find the tenant has not established this as new evidence sufficient to warrant a new hearing.

The tenant also submits that she has a doctor's letter stating that she had a hard time representing herself due to a medical condition and medication she was on. The tenant has submitted a copy of note on a physician's pad identifying someone other than either of the two tenants in this dispute. The tenant has not submitted any documentation identifying either of the two named tenants as suffering from a medical condition or the need for medication that would impact their ability to represent themselves.

Even if there was evidence that the female tenant could not necessarily represent herself, the other tenant attended the hearing and there is no claim in the Application for

Review Consideration that that tenant had an inability to represent the interests of the tenants. As such, I find this evidence, does not warrant a new hearing on the grounds that the tenant has new and relevant evidence.

The tenant also submits the landlord obtained the order based on fraud. The tenant disputes several of the landlord's statements from the hearing that were addressed in the decision of October 1, 2012. The tenant also submits that "the Judge was unfair and may of knew the agent on the other side".

Despite all of these submissions from the tenant she has provided no evidence to corroborate her allegations of fraud and in addition from her submission she appears to be only re-arguing the case instead of providing evidence of fraud. The Review Consideration process is not an opportunity to re-argue the party's case and as such I find the tenant has failed to demonstrate the landlord obtained the order based on fraud.

Decision

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

The decision made on October 1, 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: October 15, 2012.

Residential Tenancy Branch