



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR MNSD

Introduction

On September 10, 2012, 2012 Dispute Resolution Officer (DRO) XXXXXX provided a decision on the landlord's Application for Dispute Resolution seeking a monetary order for unpaid utilities and costs for reinstalling a garage door opener. The hearing had been conducted on September 6, 2012.

That decision dismissed the landlord's Application in its entirety without leave to reapply. 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 his Application for Review Consideration that that he has new and relevant evidence that was not available at the time of the original hearing; and he has evidence that the director's decision was obtained by fraud.

Issues

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

If the landlord has submitted his Application within the required time frames it must be decided whether the landlord is entitled to have the decision of September 10, 2012 suspended with a new hearing granted because he has provided sufficient evidence to establish that he has 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 September 10, 2012 the issues before the DRO were related to the landlord's claim for damages and unpaid utilities after the tenancy had ended. As such, I find the decision and order the landlord is currently requesting a review on do not relate to the matters identified above and as such the landlord was allowed 15 days to file their Application for Review Consideration.

From the landlord's submission he indicates that he received the September 10, 2012 decision on September 17, 2012 and filed their Application for Review Consideration with the Residential Tenancy Branch on October 3, 2012 (16 days after receipt of the decision and order). I find the landlord has failed to file his Application for Review Consideration within the required timelines.

Even if the landlord had filed his Application for Review Consideration within the required timeframe the landlord submits that "the adjudicator misunderstood some evidence and that the adjudicator may lack knowledge of heating fuels and delivery systems resulting in illogical analysis."

The landlord also asserts the decision was obtained based on fraud because there was no wood burner or insert and he has submitted a furnace service record.

The hearing is the opportunity for the parties to present their evidence and any information that the DRO may require to make findings and her decision. A DRO cannot rely upon any evidence or information that is not presented to the hearing either by direct evidence or by testimony. As such, the parties are required to provide all evidence prior to the hearing.

While the landlord has provided additional information about the location of fuel tanks on the residential and his business properties and further clarification on the heating methods used in both, I find that this information is not new evidence or information.

In fact, the DRO refers to the landlord's arguments that his nursery used only propane for heating and not oil and to issues related to the landlord's belief that the rental unit could not be heated entirely by the fireplace.

The landlord submits that the invoice showing furnace servicing was completed on October 29, 2011 to "refute the claim that the furnace was not serviced in the second year of the tenancy." As the tenants made their decision in early 2011 to use wood and not oil, I find the fact the landlord had the furnace serviced at or near the end of the

tenancy (end of 2011) does not indicate the tenants obtained the decision based on fraud.

Decision

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

The decision made on September 10, 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 16, 2012.

Residential Tenancy Branch