



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR MNSD O

Introduction

On September 20, 2012 Dispute Resolution Officer (DRO) XXXXX provided a decision on the landlord's Application for Dispute Resolution seeking a monetary order. The hearing had been conducted on September 20, 2012.

That decision granted the landlord a monetary order in the amount of \$1,850.00. 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 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 decision and order of September 20, 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 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 20, 2012 the issues before the DRO were related to the landlord's claim for damages and unpaid rent resulting from the tenant ending a fixed term tenancy early. As such, I find the decision and order the tenant is currently requesting a review on do not relate to the matters identified above and as such the tenant was allowed 15 days to file their Application for Review Consideration.

From the tenant's submission she indicates that she received the September 20, 2012 decision and order on September 26, 2012 and filed her Application for Review Consideration with the Residential Tenancy Branch on October 10, 2012 (13 days after receipt of the decision and order). I find the tenant has filed her Application for Review Consideration within the required timelines.

The tenant submits under the ground that she has new and relevant evidence that was not available at the time of the original hearing that she had witnesses available for testimony but that the DRO failed to call the witnesses into the hearing.

The tenant submits that the witnesses would have provided testimony relevant to the instructions the landlord had provided her in deciding whether or not to end the fixed term tenancy early. She also submits that the witnesses could provide testimony relevant to the landlord's efforts to mitigate any damage or loss in relation to their claim.

The September 20, 2012 decision states:

"At the outset of the hearing, the tenant advised that she expected her witness to attend the hearing. By the time the hearing ended the tenant's witness had not joined her at her location or called into the hearing and as the tenant did not request an adjournment, the hearing was concluded without me [DRO] having heard from that witness."

The tenant submits in her Application for Review Consideration that at the start of the hearing she had identified that she had two witnesses in attendance and they were asked to leave the room. The tenant further states the DRO said that if she needed to hear from the witnesses she would tell the tenant.

The tenant submits that the DRO never called the witnesses but rather stated that she had heard all she needed to and would make a written decision, which she did mail out after the hearing.

Although I would not consider the evidence new or unavailable at the time of the original hearing, I find the tenant was prevented the opportunity to provide her witnesses

testimony, potentially as a result of misunderstanding. As such, in the interests of administrative fairness, I find the tenant has established sufficient grounds for a new hearing.

While the tenant has also submitted fraud as one of the grounds for a Review Consideration, as I have found the tenant has already provide sufficient grounds for a new hearing, I make no ruling on the issue of fraud.

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 20, 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: October 16, 2012.

Residential Tenancy Branch