



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND OPC

Introduction

On September 14, 2012 Dispute Resolution Officer (DRO) XXXXX provided a decision on the landlord's Application for Dispute Resolution seeking to a monetary order and an order of possession for cause. The hearing had been conducted on September 13, 2012.

That decision granted the landlord a monetary order in the amount of \$189.12. The monetary order was granted as a result of the DRO's finding that the tenant owed the landlord for hydro; gas; overstaying in the rental unit; replacement of the refrigerator; and the filing fee totalling \$489.12 less the amount of the security deposit of \$300.00 held by the landlord. The issue of the order of possession was not addressed in the hearing other than to note that the tenant vacated the property on September 2, 2012. The tenant 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 tenant submits in his Application for Review Consideration 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 tenant has submitted his Application for Review Consideration within the legislated time frames required for reviews.

If the tenant has submitted his Application within the required time frames it must be decided whether the tenant is entitled to have the decision of September 14, 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 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 14, 2012 the issues before the DRO were related to the landlord's claim for damages and unpaid rent after the tenancy had ended. While I note the landlord's original Application for Dispute Resolution indicated he was seeking an order of possession, as noted above that matter was not dealt with because the tenant had already vacated the rental unit. 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 his Application for Review Consideration.

From the tenant's submission he indicates that he received the September 14, 2012 decision on September 28, 2012 and filed his Application for Review Consideration with the Residential Tenancy Branch on October 12, 2012 (13 days after receipt of the decision). I find the tenant has filed his Application for Review Consideration within the required timelines.

On the issue of new and relevant evidence the tenant submits that this claim was a surprise and not previously identified to the tenant and as such he was not allowed an opportunity to relate problems with the fridge during the tenancy. The decision records that the tenant provided testimony in relation to the fridge issue but does not note that the tenant objected to the landlord's claim on the grounds that he was not aware the landlord was making the claim.

The appropriate avenue would have been for the tenant to raise this issue during the hearing as it was not raised at the hearing the tenant cannot now rely on his failure to raise the issue as a ground for a new hearing.

The tenant submits that he had agreed with the landlord prior to the hearing that the utilities owed would be \$107.00 not \$1,107.00, however the decision clearly outlines the charges for the utilities that the landlord claimed and was granted totalled only \$107.00. As such, I find no new and relevant evidence related to utilities.

The tenant also submits under new and relevant evidence that it would have been impossible for the landlord to assess the problem with the fridge, however the tenant has not provided any evidence to support this statement. The tenant also submits that the landlord breached Section 29 (of the *Act*?) by entering the rental unit illegally to get

photographs of the unit. The tenant did not explain how this was relevant to the matters at the hearing.

Based on the above, I find the tenant has failed to establish that he has new or relevant evidence that was not available to him at the time of the hearing sufficient to warrant a new hearing.

The tenant submits in relation to his claim that the landlord obtained the decision by fraud that the tenant had evidence that he not been repeatedly late paying rent by providing copies of his money order receipts for the payment of rent. The tenant submits that the landlord used this information to have someone else move into the rental unit.

However, as the issue of possession was not dealt with in the hearing and since the tenant vacated the rental unit prior to the hearing and the decision dealt solely with compensation for unpaid utilities; damage to the refrigerator; and rent for overstaying I find the issue of whether or not the tenant was repeatedly late paying rent had no bearing on the decision. As such, I find the tenant has failed to establish that the decision was based on fraud.

Decision

For the reasons noted above, I dismiss the tenant's Application for Review Consideration. The decision made on September 14, 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 18, 2012.

Residential Tenancy Branch