



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: MNR OPR

Introduction

On October 16, 2012, 2012 Dispute Resolution Officer (DRO) XXXXXX provided a decision on the landlord's Application for Dispute Resolution seeking an order of possession and monetary order for unpaid rent. The proceeding had been conducted through the Direct Request process with no participatory hearing being held.

That decision granted the landlord an order of possession and a monetary order in the amount of \$1,250.00. The tenants 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 tenants submit in their Application for Review Consideration that they have evidence that the director's decision was obtained by fraud.

Issues

It must first be determined if the tenants have submitted their Application for Review Consideration within the legislated time frames required for reviews.

If the tenants have submitted their Application within the required time frames it must be decided whether they are entitled to have the orders of October 16, 2012 suspended with a new hearing granted because they have provided sufficient evidence to establish that 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 decision relates to a landlord's notice to end a tenancy for non-payment of rent.

From the decision of October 16, 2012 the issues before the DRO were related to the landlord's Application for an order of possession based on a notice to end tenancy for unpaid rent. As such, I find the decision and order the tenants are requesting a review on allowed 2 days for the tenants to file their Application for Review Consideration.

From the tenants' submission they indicate that they received the October 16, 2012 decision on October 16, 2012 and filed their Application for Review Consideration with the Residential Tenancy Branch on October 18, 2012 (2 days after receipt of the decision and order). I find the tenants have filed their Application for Review Consideration within the required timelines.

The tenants submit that while they had not paid all of the rent for September on September 1, 2012 they had had an informal arrangement with the landlord for the duration of the tenancy to pay the rent in biweekly installments. They also submit that they went to meet the landlord on September 29, 2012 to provide full payment for the balance of September.

The tenants submit that at that meeting the landlord refused to accept payment and issued the 10 Day Notice that is the subject of these proceedings. The tenants have provided copies of receipts confirming the tenants had at least paid \$325.00 towards rent for September.

While I cannot definitively determine the landlord has committed fraud in obtaining the decision and orders of October 16, 2012, I do find that had the DRO had these receipts and some of this information from the tenants at the time of the proceeding the decision may have been altered.

Therefore, in the interests of administrative fairness and natural justice, I find the tenants have established sufficient grounds for this matter to be reheard through a participatory hearing.

Decision

For the reasons noted above, I find the tenants have established sufficient grounds for a new hearing on these matters. Details of the new hearing are included with the tenants' copy of this decision. The tenants **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 October 16, 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 24, 2012.

Residential Tenancy Branch