



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF LRE OLC

Introduction

On October 16, 2012 Dispute Resolution Officer (DRO) XXXXX provided a decision on the tenant's Application for Dispute Resolution seeking to an order to have the landlord comply with the Residential Tenancy Act (Act), regulation or tenancy agreement and to suspend or set conditions on the landlord's right to enter the rental unit. The hearing had been conducted on October 16, 2012.

That decision dismissed with leave to reapply. 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.

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 October 16, 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.

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 October 16, 2012 the issues before the DRO were related to the tenant seeking restrictions on the landlord's right to enter the rental unit. As such, I find the decision and order the tenant is requesting a review on does not relate to the matters noted 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 October 16, 2012 decision on October 19, 2012 and filed his Application for Review Consideration with the Residential Tenancy Branch on October 22, 2012 (1 business day after receipt of the decision and order). I find the tenant has filed his Application for Review Consideration within the required timelines.

The tenant submits he wants the decision "reassessed" for the following reasons:

1. The tenant submits the landlord did not dispute the duration of the tenancy during the hearing and so concludes the landlord and the DRO "evidently had discussion about this matter before the appointed time for it to begin, and without my involvement." The tenant submits that he fails to see how the duration of the tenancy is relevant to the issues before the DRO. I agree with the tenant, this evidence is not relevant to the matters considered by the DRO. I also note that there is no mention of what time the parties entered into the call and as such, I find the tenant has failed to provide any evidence that he called into the hearing specifically at the appointed time for the hearing to begin. In addition, I find the tenant has failed to provide any evidence the landlord or DRO had any contact prior to the hearing time.
2. The tenant submits that the DRO wrote an incorrect statement in regards to his evidence. I find the submission suggests not that the tenant has new and relevant evidence but rather that he wants to reargue his position. The Review Consideration process is not an opportunity for either party to reargue their case.
3. The tenant submits that DRO's finding that "neither party would intentionally transgress on the rights of the other" failed to mention the landlord's repeated interruptions, name calling, and threats to evict him during the conference call. Again I find the tenant is not providing new and relevant evidence but is attempting to reargue his position.
4. The tenant submits his analysis on the landlord's belief that she has the right to access his rental unit based on an example from the first year of his tenancy (1989). The tenant does not indicate why this analysis was not available prior to the original hearing. As this analysis is based, at least in part, on the tenant's observations in relation to events in 1989 I find it unlikely that it was unavailable to the tenant prior to the hearing.

5. In this point the tenant seeks clarification on the DRO's use of the term "concrete evidence". Clarifications are not a ground for Review Consideration and as such, I refer the tenant to speak to an Information Officer with the Residential Tenancy Branch to find out how to seek a clarification of the decision of October 16, 2012.
6. Again the tenant seeks clarification on how the DRO assessed the "integrity of the disputants" and as such I find this point is unrelated to any ground for Review Consideration.

The tenant then submits specifically that he wants a review of the decision for the following reasons:

1. The inappropriate verbal exchanges between the DRO and the landlord. As noted above I find the tenant has failed to provide any evidence of any inappropriate verbal exchanges and therefore any ground to grant a Review.
2. The discrepancy between the landlord's estimate of the duration of the tenancy and the actual term. As noted above, I concur with the tenant that this evidence is not relevant and therefore not a ground to grant a Review.
3. The DRO's failure to control the landlord's aggression during the hearing resulting in an inequitable "exchange of information". The decision makes no mention of inappropriate behaviour by either party during the call or any objections made by the tenant in regards to the landlord's behaviour. I find the tenant has failed to substantiate the claim of any inappropriate behavior and even if he had this is not a ground that would allow a Review to be granted.
4. The tenant submits that the DRO gave insufficient weight to the tenant's reports of the landlord's activities and he provides in his Application for Review Consideration the names of three other tenants and contact information for two of them. There decision makes no mention that the tenant had witnesses attend the hearing or that he had them available to be called at the hearing and the tenant has not provided any evidence or explanation as to why they were not available for the original hearing. As such the tenant has failed to establish this as a ground for granting a Review.
5. The tenant submits the DRO gave insufficient weight to the overheard conversation between the landlord and the housing manager. I find this statement and his subsequent remarks in relation to this claim to be the tenant's attempt to reargue the case and is, therefore, as noted above, not a ground for granting a Review.
6. The tenant submits he should be granted a Review because of the "irrational nature of the landlord's reasoning". I find that this is not new evidence nor is it relevant evidence and as such the tenant has failed to provide evidence on this point sufficient to grant a Review.

Decision

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

The decision made on October 16, 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 26, 2012.

Residential Tenancy Branch