



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

Introduction

On October 18, 2012 Dispute Resolution Officer (DRO) XXXXX provided a decision on the landlord's Application for Dispute Resolution seeking to and order of possession and a monetary order for unpaid rent. The proceeding was conducted through the Direct Request process on October 18, 2012 without a participatory hearing.

That decision granted the landlord an order of possession and a monetary order in the amount of \$400.00. The tenant did not request an extension of time to apply for Review Consideration.

Division 2, Section 79(2) under the *Residential Tenancy Act* 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 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 order of October 18, 2012 suspended with a new hearing granted because she has 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 decision or order is

received by the party, if the decision relates to a landlord's notice to end the tenancy due to non-payment of rent.

From the decision of October 18, 2012 the issues before the DRO were related to the landlord's 10 Day Notice to End Tenancy for Unpaid Rent. As such, I find the order the tenant is requesting a review on allowed 2 days for the tenant to file her Application for Review Consideration.

From the tenant's submission she indicates that she received the October 18, 2012 order on October 20, 2012 and filed her Application for Review Consideration with the Residential Tenancy Branch on October 22, 2012 (2 days after receipt of the order). I find the tenant has filed their Application for Review Consideration within the required timelines.

The tenant submits the following:

1. "The witness on the direct request is his wife not sister in law". The tenant does not provide any information on how this information was used to obtain the order. In support of this claim however the tenant has submitted a copy of the landlord's Proof of Service of a 10 Day Notice to End Tenancy that is signed by the landlord's brother-in-law as a witness." As such, I cannot determine what the tenant means by this assertion and cannot therefore find that she has provided evidence of any fraud;
2. "What would be true is that I gave him 400\$ and told him to keep the damage" As rent on the rental unit is \$800.00 it is apparent from this statement by the tenant that she is confirming that she only paid \$400.00 towards rent for the month of October, as such she has provided no evidence of fraud on the part of the landlord;
3. "What was false is that I had giving him my notice to end tenancy because of the safty of myself and daughter whos 7, the door frame is cracked badly and I had to put a large living room chair in front of it it wouldn't have taken much force to break in all the damage he claims wasn't done by us if was maitnence he was to fix." The tenant has submitted a copy of a handwritten notice to end tenancy from her to the landlord dated October 1, 2012 to end the tenancy effective November 1, 2012. As this confirms the tenant was living in the rental unit for the month of October, I find the tenant has provided no context as to why this would constitute fraud in obtaining and order of possession and a monetary order for unpaid rent for the month of October 2012;
4. "I called him to talk about the direct request and what it said a bout the damages, and said he knows that that damage wasn't done by us and he would stop all this with the RTB if I payed the 400\$ I said no because he would with hold as much of the damage deposit as he could regardless of lack of damage done." It is not clear what point the tenant is trying to make that suggests the landlord obtained the decision by fraud however again the tenant is confirming that she has not paid the landlord the full rent for October 2012;

5. "He knew I had to work everyday Mon-Fri 730 am to 4:00 pm so I wasn't able to call and talk to the RTB." It is not clear what the tenant is trying to make in regard to this claim. The tenant has provided no reasons why she could not call the Residential Tenancy Branch (RTB) on her breaks or why she could not have sent an email to the RTB if she had questions or why she could not have had an agent contact the RTB on her behalf. Additionally, whether landlord knew about the tenant's schedule or not has no bearing on whether they obtained the decision and order by fraud;
6. "And he lied about 99% of the info claimed." The tenant has made this statement without providing any context or evidence to support the statement; and
7. "Wasn't givin anything to file an application for the direct request." Again this statement is unclear and it provides no context to establish that the landlord obtained the decision and order by fraud.

From all of the above I find the tenant has failed to provide any evidence to support her claim that the landlord obtained the decision and order by fraud.

Decision

I dismiss the tenant's Application for Review Consideration.

The decision made on October 18, 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