



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC CNR FF LAT LRE MNDC OPT

Introduction

On October 19, 2012 Dispute Resolution Officer (DRO) XXXX provided a decision on the cross Application's for Dispute Resolution. The landlord sought to an order of possession for cause, for breach of an agreement and for unpaid rent and for a monetary order. The tenant sought to cancel a notice to end tenancy for unpaid rent and a notice to end tenancy for cause; to have an order to have the landlord comply with the Act; to suspend or set conditions on the landlord's right to enter the rental unit; to obtain an order of possession and to change the locks on the rental unit. The hearing had been conducted on October 19, 2012.

That decision dismissed the tenant's entire Application and granted the landlord an order of possession based on the 10 Day Notice to End Tenancy for Unpaid Rent. 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 and order of October 19,

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 he has evidence 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 an order of possession because of a notice to end tenancy for unpaid rent.

From the decision of October 19, 2012 the issues before the DRO were related to the landlord's notice to end tenancy for unpaid rent. As such, I find the decision and order the tenant is requesting a review on allowed 2 days for the tenant file his Application for Review Consideration.

From the tenant's submission he indicates he received the October 19, 2012 decision and order on October 24, 2012 and filed his Application for Review Consideration with the Residential Tenancy Branch on October 24, 2012 (the same day that he received the decision and order). I find the tenant has filed his Application for Review Consideration within the required timelines.

In the decision the DRO writes "Both parties agree that the Landlord served the tenant with a 10 day notice to end tenancy for unpaid rent on October 2, 2012." The DRO goes on to say that "Both parties agreed that the Tenant made late partial payments on October 3, 2012 by "E-transfer" of \$350.00 and again on October 7, 2012 of \$350.00."

The tenant submits with his Application for Review Consideration documentary evidence that the first payment was made by e-transfer on October 3, 2012 in the amount of \$350.00 and the second payment was made by e-transfer on October 5, 2012.

As the 10 Day Notice to End Tenancy for Unpaid Rent allowed the tenant 5 days to pay rent in full and the parties agreed that the tenant received the Notice on October 2, 2012 then the tenant would have had until October 7, 2012 to pay the rent in full and the documentary evidence seems to support that it was paid within 5 days of receipt of the Notice.

While the documentary evidence submitted is not sufficient to determine unequivocally that the landlord obtained the decision by fraud I find the tenant has provided sufficient grounds for the matter of the payment rent for October 2012 to be re-heard. As the decision also acknowledges that certain matters were not dealt with because the tenancy was deemed to have ended I find it is necessary to reconvene a new hearing on all matters in both parties Applications for Dispute Resolution.

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 October 19, 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 29, 2012.

Residential Tenancy Branch