



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC

Introduction

On November 5, 2012, 2012 Dispute Resolution Officer (DRO) XXXXXX provided a decision on the cross Applications for Dispute Resolution with both parties seeking to monetary orders. The hearing had been conducted on November 5, 2012.

That decision granted tenant entitlement of double the security deposit in the amount of \$1,850.00 and compensation to the landlord for lost rental income in the amount of \$4,100.00. A monetary order was issued to the landlord in the amount of \$2,250.00. 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 new and relevant evidence that was not available at the time of the original hearing and 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 decision of November 5, 2012 suspended with a new hearing granted because she has provided sufficient evidence to establish that she has new and relevant evidence that was not available at the time of the original hearing or she has evidence the tenant 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 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 November 5, 2012 the issues before the DRO were related to the landlord's claim for losses and the tenant's claim to return of the security deposit. As such, I find the decision the tenant is requesting a review on allowed 15 days to file their Application for Review Consideration.

From the tenant's submission she indicates that she received the November 5, 2012 decision on November 15, 2012 and filed her Application for Review Consideration with the Residential Tenancy Branch on November 19, 2012 (4 days after receipt of the decision and order). I find the tenant has filed her Application for Review Consideration within the required timelines.

In relation to the claim of new and relevant evidence, the tenant submits that the landlord had been attempting to re-rent the rental unit as vacation rental by the week and not a monthly rental and that the tenant found this information out by checking "her whole claim and found a listing on the internet under vacation rentals" after the original hearing.

The tenant also submits that she did not receive the landlord's claim until the day of the hearing because her mail box had been vandalized and she had not been getting her mail delivery. While it is not clear in her application, I understand this point is made to provide her reasons why the evidence was not available for the original hearing. However, I note there is nothing in the original decision that records that the tenant advised the DRO that she had not had sufficient time to prepare for the hearing. There is no record of the tenant seeking and adjournment.

Further the tenant has not provided any of evidence that she indicates she has found. It is not sufficient to state you have evidence in an Application for Review Consideration; the party must provide the evidence at the time of the submission of the Application.

In regard to the tenant's claim that the landlord obtained the order based on fraud the tenant submits in part arguments that appear to have been made during the hearing, specifically relating to the showing of the rental unit and refusal to let the tenant sublet. As such, I find the tenant is attempting to reargue the claim and a Review Consideration Application is not an opportunity to do so.

The tenant also submits under the issue of fraud that the landlord did not attempt to re-rent the unit as anything but a vacation rental and this would have impacted the landlord's likelihood of re-renting the unit. Again the tenant has provided no evidence to

support her claim that the landlord had been attempting to re-rent the unit as a vacation rental and it is not sufficient simply to make the statement she must provide evidence to support her claim.

For these reasons, I find the tenant has failed to provide sufficient evidence to establish that she has new evidence that was not available at the time of the original hearing or that the landlord obtained the decision by fraud.

Decision

As per the above, I dismiss the tenant's Application for Review Consideration.

The decision made on November 5, 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: December 07, 2012.

Residential Tenancy Branch