



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR

Introduction

On December 21, 2012 Arbitrator XXXX provided a decision on cross Applications for Dispute Resolution with both parties seeking monetary orders. The hearing had been conducted on December 21, 2012.

That decision granted the tenants a monetary award of \$1,205.17 and the landlord an award of \$42.50. The landlord did not request an extension of time to apply for Review Consideration.

Division 2, Section 79(2) under the *Residential Tenancy Act (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 landlord 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.

Issues

It must first be determined if the landlord has submitted her Application for Review Consideration within the legislated time frames required for reviews.

If the landlord has submitted her Application within the required time frames it must be decided whether the landlord is entitled to have the decision of December 21, 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.

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 December 21, 2012 the issues before the Arbitrator were related to the landlord's claim for lost income and the tenant's claim for the return of rent. As such, I find the decision and order the landlord is requesting a review allowed the landlord 15 days to file their Application for Review Consideration.

From the landlord's submission she indicates that she received the December 21, 2012 decision on December 28, 2012 and filed her Application for Review Consideration with the Residential Tenancy Branch on January 11, 2013 (13 days after receipt of the decision). I find the landlord has filed her Application for Review Consideration within the required timelines.

The landlord submits that one of her witnesses was out of town and could not be located in time for the hearing, especially since she submitted her Application for Dispute Resolution on October 18, 2012 and the hearing was on December 21, 2012. The landlord does not explain how the long this witness had been out of town or why he could not have provided a written statement or participated in the hearing teleconference from wherever he was.

Further, the landlord submits that this witness would be able to provide testimony regarding the discussions held with the tenant in which the renovations were discussed. The landlord submits that this witness can verify that there was no breach of material terms.

While I accept this witness may have been privy to discussions between the tenant and the landlord during an open house the landlord has provided no evidence that this witness observed every conversation the landlord and tenant had up to the time the parties entered into the tenancy agreement or any promises that may have been made in other discussions.

As such, I find, in relation to this witness, the landlord has not established that this testimony from the witness, either by way of written submission or attendance, was unavailable for this hearing.

The landlord also submits that her witness that did attend the hearing "can also verify there was no breach of material terms but was not questioned on this point."

It is incumbent upon the party who provides witnesses to prepare the witness and/or to question the witness during the hearing for all matters the party wants the witness to address.

Failure on the part of the party to have their own witness provide the testimony that they feel is relevant to the case does not constitute additional to become new evidence or testimony. I find to allow a new hearing on this basis would be doing so solely to provide the landlord an opportunity to re-argue her case. As such, I find the landlord has failed to establish that this witness could not have provided additional testimony in the original hearing.

Decision

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

The decision made on December 21, 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: January 25, 2013