



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

Introduction

On December 13, 2012 Arbitrator XXXXX provided a decision on the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order. The matter had been adjudicated through an *ex parte* Direct Request proceeding on December 13, 2012.

That decision granted the landlord an order of possession and monetary order. The tenants 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 tenants submit in their Application for Review Consideration that they have evidence that the director's decision was obtained by fraud.

Issues

It must first be determined if the tenants have submitted their Application for Review Consideration within the legislated time frames required for reviews.

If the tenants have submitted their Application within the required time frames it must be decided whether the tenants are entitled to have the order of December 13, 2012 suspended with a new hearing granted because they have 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 an early end to the tenancy; matter of possession of the rental unit; a notice to end tenancy for non-payment of rent; or withholding consent to sublet or assign.

From the decision of December 13, 2012 the issues before the Arbitrator were related to the landlord's notice to end tenancy for the non-payment of rent. As such, I find the decision and order the tenants are requesting a review on allowed the tenants 2 days to file their Application for Review Consideration.

From the tenants' submission they indicate that they received the December 13, 2012 decision on December 22, 2012 and the order December 23, 2012 and filed their Application for Review Consideration with the Residential Tenancy Branch on December 24, 2012 (2 days after receipt of the decision). I find the tenants have filed their Application for Review Consideration within the required timelines.

The tenants submit the landlord failed to serve the December 13, 2012 decision in a timely manner; that the rent had been paid in full December 11, 2012; that the landlord failed to inform the Residential Tenancy Branch of this payment in full. The tenant provided copies of their receipts.

The receipts submitted into evidence for the tenants' Review Consideration include:

- December 2, 2012 receipt issued for \$300.00 with a balance of \$450.00 owing. The landlord has noted on the receipt that the amount received was for use and occupancy only;
- December 5, 2012 receipt issued for \$110.00 with a balance of \$415.00 owing. The landlord has noted on the receipt that the amount received was for use and occupancy only and that the tenant had until December 7, 2012 to pay the balance in full;
- December 9, 2012 receipt issued for \$215.00 with a balance of \$200.00 owing. The landlord has noted on the receipt that the amount received was for use and occupancy only; and
- December 11, 2012 receipt issued for \$200.00 with a balance of \$0.00 owing. The landlord has noted on the receipt that the amount received was for use and occupancy only.

The tenants submit that the receipts prove the rent was paid "2 days before decision of December 13, 2012". I accept that tenants have provided sufficient evidence to establish that the rent was paid in full 2 days prior to the decision and in the absence of any notification from the landlord to the Residential Tenancy Branch, however I note the decision of December 13, 2012 was based on the tenants' failure to pay the rent in full within 5 days of receiving the 10 Day Notice to End Tenancy on December 2, 2012.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

As such, there is no requirement of the landlord to inform the Residential Tenancy Branch that the rent had been paid in full after the 5 day period. As the tenants received the 10 Day Notice on December 2, 2012 (the tenants do not submit in their Application for Review that they dispute this statement from the original decision) I find that they had until December 7, 2012 to pay the rent in full or file an Application for Dispute Resolution seeking to cancel the notice and they did not.

As such, the fact the landlord obtained the order of possession on December 13, 2012 did not hinge on the fact the tenants had made additional payments of rent or, as noted on the receipts provided by the tenants, "for use or occupancy only" after December 7, 2012.

From the receipts I find the tenants made two payments to the landlords after December 7, 2012 and therefore the landlord did not commit fraud in obtaining the order of possession.

As to the monetary order obtained by the landlord in the December 13, 2012 decision in the amount of \$200.00 again there was no requirement that the landlord provide this updated information for the Direct Request proceeding, however I note that should the landlord try to enforce the monetary order through any process of collections the tenants may use the receipt issued by the landlord on December 11, 2012 as evidence to establish that they have paid the amounts ordered under that order.

As such, I find the landlord did not commit fraud in obtaining the monetary order.

Decision

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

The decision made on December 13, 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 03, 2013.

Residential Tenancy Branch