



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC MT OLC RR

Introduction

On October 25, 2012 Dispute Resolution Officer (DRO) XXXXXX provided a decision on cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order and the tenant sought a monetary order. The hearing had been conducted on October 23, 2012.

That decision granted the landlord a monetary order for rent reduced by the amount of the security deposit and a monetary award of \$200.00 granted to the tenant for loss of quiet enjoyment. The landlord requested 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 evidence that the director's decision was obtained by fraud.

Issues

It must first be determined if the landlord has submitted her Application for Review Consideration within the legislated time frames required for reviews or if she is entitled to an extension of time.

If the landlord has submitted her Application within the required time frames or is granted an extension it must be decided whether the landlord is entitled to have the order of October 25, 2012 suspended with a new hearing granted because she has provided sufficient evidence to establish that 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 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 October 25, 2012 the issues before the DRO in the tenant's Application were related to the tenant's claim for return of the security deposit and a loss of quiet enjoyment. As such, I find the order the landlord is requesting a review on allowed the landlord was allowed 15 days to file her Application for Review Consideration.

From the landlord's submission she indicates that she received the October 25, 2012 order on November 7, 2012 and filed her Application for Review Consideration with the Residential Tenancy Branch on January 8, 2013 (74 days after receipt of the decision and order). I find the landlord has failed to file her Application for Review Consideration within the required timelines.

However Section 66 of the *Act* allows an extension of a time limit in exceptional circumstances. From the landlord's Application for Review Consideration she explains that she had applied for documents to support her Application for Review Consideration from the local police authority on November 8, 2012 (1 day after receiving the order) but that she did not receive the requested documents until December 28, 2012.

The landlord goes on to state that due to illness she could not submit her Application for Review Consideration until January 8, 2013. The landlord provided no evidence to support her assertion that she had been ill.

I will accept the landlord faced exceptional circumstances to obtain evidence to support her Application for Review Consideration that she had no control over the timeline required by the local police authority to fulfil her request. In addition, I order that the landlord would have 15 days to submit her Application for Review Consideration from the date her evidence was received and therefore I will consider the landlord's Application for Review Consideration.

The landlord submits the tenant obtained the decision that granted the tenant compensation in the amount of \$200.00 by lying in the proceeding. In support of this claim the landlord has submitted the following documents:

- A copy of what appears to be an advertisement for her rental unit;
- A copy of an envelope addressed to her new roommate at the dispute address;
- A copy of a letter from her new roommate disclosing his experience living with the landlord since September 1, 2012; and

- A copy of a police report confirming the police received a complaint on July 23, 2012 regarding the complainant's roommate (named as the landlord) and that the recommendation from the police to the complainant get a lock on her door.

I find that the evidence of the advertisement for her rental unit; the envelope and that letter from her new roommate are related to observations from her new roommate and about his relationship with the landlord had no bearing on the relationship of the landlord and the previous tenant or the events of that tenancy.

From the decision of October 25, 2012 the DRO considered the tenant's submission that she had been told by police leave the rental unit in regard to the landlord's claim for rent. The DRO found that regardless of the reasons the tenant left the tenant had failed to provide the landlord with adequate notice as required under Section 45 of the *Act* and granted the landlord rent for the month of August 2012.

The landlord submits that from this evidence it confirms that the tenant lied in the hearing and therefore obtained the decision that granted the tenant \$200.00 by fraud. The original decision granted the tenant \$200.00 for compensation for the landlord breaching the implied covenant of quiet enjoyment. The DRO wrote:

"The landlord continually demanded to know where the tenant was going. On one occasion she entered into the tenant's suite without notice and without the consent of the tenant and touched her personal belongings and emptied them into garbage bags."

The landlord has provided no evidence that any of the statements regarding this part of the Application were fraudulent, rather landlord asserts that because she has provided evidence that the tenant lied in one instance she must have lied about everything else.

While I agree that the landlord has provided evidence that the police noted in their report a specific statement they had provided to the tenant and that the report indicates the call was on a different date than that specified in the tenant's testimony, the landlord has provided no evidence to substantiate her claim that the testimony provided by the tenant that she was entering into the tenant's suite or that she demanded to know where the tenant was going.

As such, I find the landlord has failed to provide sufficient evidence that the portion of the decision and order that granted the tenant compensation for the loss of quiet enjoyment was fraudulent. Rather, I find the landlord is attempting to reargue her position, which is contrary to the purpose of Review Consideration.

Decision

Based on the above, I dismiss the landlord's Application for Review Consideration.

The decision made on October 25, 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 15, 2013