



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: ERP MNDC OLC OPT RP RR

Introduction

On February 15, 2013 an Arbitrator provided a decision on the tenant's Application for Dispute Resolution seeking to a monetary order; an order of possession; an order to have the landlord make repairs and emergency repairs and to reduce rent. The hearing had been conducted on February 15, 2013.

That decision granted the tenant a monetary order and an order to allow the tenant to "re-enter the unit" and allow the tenant to retrieve his property and/or continue the tenancy. The landlord 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 landlord submits in his Application for Review Consideration that he has evidence that the director's decision was obtained by fraud.

Issues

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

If the landlord has submitted his Application within the required time frames it must be decided whether the landlord is entitled to have the decision and orders of February 15, 2013 suspended with a new hearing granted because he has provided sufficient evidence to establish 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 February 15, 2013 the issues before the Arbitrator were related to the tenant's claim for compensation; for repairs; emergency repairs and to allow the tenant into the rental unit. As such, I find the decision and order the landlord is requesting a review allowed 15 days to file his Application for Review Consideration.

From the landlord's submission he indicates that he received the February 15, 2013 decision and order on February 28, 2013 and filed their Application for Review Consideration with the Residential Tenancy Branch on March 4, 2013 (2 business days after receipt of the decision and order). I find the landlord has filed his Application for Review Consideration within the required timelines.

The landlord submits that the tenant obtained the decision based on fraud because the tenant failed to name the correct landlord or serve the landlord with notice of the hearing at his service address.

The landlord has provided a copy of the tenancy agreement signed by the parties June 12, 2010 that clearly identifies the applicant on the Application for Review Consideration as the landlord for the dispute address and with this tenant named as the tenant. The tenancy agreement and Condition Inspection Report list a different service address for the landlord than the one identified on the tenant's Application for Dispute Resolution.

The tenant's Application for Dispute Resolution identifies a different landlord and uses a different service address for the landlord than those identified in the landlord's documents submitted in his Application for Review Consideration.

While it is not clear whether the tenant's submission of an incorrect landlord name and address was intentionally provided I find, the landlord has established that he was unable to attend the hearing because he had not been served with notice of the hearing at his address for service that the tenant should have been aware of and in the interests of natural justice the landlord has substantiated sufficient grounds for a new hearing to be convened.

Decision

For the reasons noted above, I find the landlord has established sufficient grounds for a new hearing on these matters. Details of the new hearing are included with the landlord's copy of this decision. The landlord **must serve the tenant within 3 days** of receiving this decision with a copy of this decision and the Notice of Hearing documents.

The decision made on February 15, 2013 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: March 07, 2013

Residential Tenancy Branch