



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC CNR

Introduction

On March 5, 2013 Arbitrator XXXXX provided a decision on the tenants' Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause and a 10 Day Notice to End Tenancy for Unpaid Rent. The hearing had been conducted on March 5, 2013.

That decision dismissed the tenants' Application and granted the landlord an order of possession. The tenants requested 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 new and relevant evidence that was not available at the time of the original hearing; and 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 or are entitled to an extension.

If the tenants have submitted their Application within the required time frames it must be decided whether the tenants are entitled to have the decision of March 5, 2013 suspended with a new hearing granted because they have provided sufficient evidence to establish that they have new and relevant evidence that was not available at the time of the original hearing; or they have 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 5 days after a copy of the decision is received by the party, if the decision relates to a notice to end tenancy for any reason other than non-payment of rent.

From the decision of March 5, 2013 the issues before the DRO were related to a landlord's notice to end tenancy for cause. As such, I find the decision and order the tenants are requesting a review on allowed 5 days to file their Application for Review Consideration.

From the tenants' submission they indicate that they received the March 5, 2013 decision on March 11, 2013 and filed their Application for Review Consideration with the Residential Tenancy Branch on March 12, 2013 (1 day after receipt of the decision). I find the tenants have filed their Application for Review Consideration within the required timelines and no extension is required.

However, the tenants submit that they need additional time because "there are several new documents that would help substantiate the tenants' case, but they are unattainable in the time frame the review process allows." The tenants do not indicate what documents they need additional time for or how long they would need to obtain them. The tenants also do not indicate why this evidence was not available either for the hearing or in time to submit their Application for Review Consideration.

By failing to indicate these items, I find the tenants have failed to identify any reason to extend the time lines for submitting an Application for Review Consideration and/or any of their support evidence for the Review Consideration; I dismiss the tenants' Application to extend the time frames for submission.

In their submission the tenants submit that that they have new and relevant evidence and they submit that they were not given an opportunity to provide testimony or evidence. While the tenants submit that they were not given an opportunity to provide testimony regarding any rent increases, the decision clearly denotes that the tenants' advocate did testify regarding rent increases but that they had not provided any evidence to support their claims. In addition, the tenants have not, in their Application for Review Consideration, even provided the evidence they indicated they had at the hearing. As such, I find the tenants have failed to establish they have new and relevant evidence that was not available for the original hearing.

The tenants submit that the decision was obtained by fraud because the Arbitrator provided false information in order to justify his decision. The ground of obtaining a decision based on fraud is relevant to the evidence and information provided by the parties to the tenancy for the purposes of the hearing. The Arbitrator's role is to determine the outcome of the dispute based on the Application for Dispute Resolution; the evidence submitted by both parties and the *Act* and regulation.

As such, I find an Arbitrator, who does not provide evidence in a hearing, cannot be held to provide fraudulent evidence. Therefore I find the tenants have failed to establish fraud as a ground for a new hearing through the Review Consideration process.

If a party to dispute resolution believes that an Arbitrator has conducted a hearing that has not afforded them to be heard; that they have erred on a point of law; or that the decision rendered by the Arbitrator is patently unreasonable that party may seek remedy through a judicial review by applying to the Supreme Court of British Columbia.

Decision

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

The decision made on March 5, 2013 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: March 19, 2013

Residential Tenancy Branch