



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes OPR, MNR

Basis for Review Consideration

Section 79(2) of the Residential Tenancy Act (Act) states that 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.

Applicant's Submission

The application for review consideration states the decision should be reviewed on the ground(s) that the Tenant was unable to attend the original hearing because of circumstances beyond the Tenant's control and the Tenant has evidence the Landlord received the decision and order by fraud.

Analysis

The original hearing was conducted by way of Direct Request Proceeding which is a non participatory hearing and is conducted on only written evidence supplied by the Landlord. Consequently neither the Landlord nor the Tenant is required to be in attendance during this type of hearing. The Tenant's claim that she was unable to attend the hearing is immaterial to the type of hearing that was conducted therefore the Tenant's request for a review hearing based on the Tenant not attending the hearing is dismissed without leave to reapply. As well with respect to notice of the hearing, the Landlord's written evidence includes a Proof of Service Document that states the Landlord personally served the Tenant the Notice of Direct Request Proceeding at 3:05 p.m. on March 29, 2013.

With respect to the Tenant's claim of fraud in the review consideration application, the Tenant says the Landlord said the rent and utilities for March, 2013 were not paid and they issued a 10 Day Notice to End Tenancy for unpaid rent and utilities on March 5, 2013. The Tenant claims the rent and utilities were paid on March 3, 2013 and the Landlords knew this when they made their application. The Tenant submitted two receipts for rent payments, one dated February 1, 2013 and the other dated March 3, 2013. Neither receipt is signed by the Landlord, but the writing is the same on both receipts, the receipt form is the same and the writing resembles the Landlord's writing in the Landlord's application. I find the Tenant has established grounds for a review hearing based on the receipts that may prove the rent was paid on March 3, 2013. If this is the case then the Landlord may have obtained the decision an order by fraud.

Conclusion

I order that a new hearing take place and I order that the decision and Order made on April 9, 2013 are suspended pending completion of the new hearing.

Notices of the time and date of the Review Hearing are included with this Review Consideration Decision for the Tenant to serve on the Landlords within 3 days of receipt of this Decision.

At the same time, the Tenant must also serve a copy of this Decision to the Landlords.

Failure to attend the hearing at the scheduled time and to meet deadlines for the submission and service of evidence will result in a decision being made on the basis of information before the Arbitrator and the testimony of the party in attendance at the hearing.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new Review Hearing. Fact sheets are available at <http://www.rto.gov.bc.ca/content/publications/factSheets.aspx> that explain evidence and service requirements.

If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020

Victoria: 250-387-1602

Elsewhere in BC: 1-800-665-8779

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

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: April 22, 2013

Residential Tenancy Branch

