



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC FF MNDC OLC RR

Introduction

On March 12, 2013 Arbitrator XXXXXX provided a decision on the tenant's Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause; a monetary order for loss of quiet enjoyment; an order to have the landlord comply and to allow the tenant to reduce rent for repairs services or facilities agreed upon but not provided. The hearing had been conducted on March 12, 2013.

That decision granted the 1 Month Notice be set aside and dismissed the balance of the tenant's Application. The tenant 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 tenant submits in her Application for Review Consideration that that she has new and relevant evidence that was not available at the time of the original hearing; and she has evidence that the director's decision was obtained by fraud.

Issues

It must first be determined if the tenant has submitted her Application for Review Consideration within the legislated time frames required for reviews. If the tenant has submitted her Application within the required time frames it must be decided whether the tenant is entitled to have the decision of March 8, 2013 suspended with a new hearing granted because she has provided sufficient evidence to establish that she has new and relevant evidence that was not available at the time of the original hearing; or she has 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 15 days after a copy of the decision 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 March 12, 2013 the issues before the Arbitrator were related to compensation for damage or loss; the landlord's compliance with the *Act*, regulation or tenancy agreement and reduced rent as well as a notice to end tenancy. As such, I find the decision the tenant is requesting a review on, at least in part, does not relate to the matters identified above and as such the tenant is allowed 15 days to file their Application for Review Consideration.

From the tenant's submission she indicates that she received the March 12, 2013 decision on March 22, 2013 and filed her Application for Review Consideration with the Residential Tenancy Branch (RTB) on April 8, 2013 (17 days after receipt of the decision and order). However, as the 15th day occurred on a day that the RTB was closed the deadline is extended to the first date the RTB is open again, or in this case April 8, 2013. I find the tenant has filed her Application for Review Consideration within the required timelines.

In support of her Application for Review Consideration the tenant has submitted a document that she has called a "Transcript of Dispute Resolution Hearing". I note that there is no official transcript or recording of this hearing on file. Further in the tenant's explanation of the "transcript" she states that: "my speaker phone was not on until page 11; however, proper amplifying equipment would pick up the conversation that cannot be heard until then."

I note that Residential Tenancy Branch Rules of Procedure 9.1 stipulates that private audio, photographic, video or digital recording of the dispute resolution proceeding is not permitted. Rule 9.2 allows for an official recording and sets out the procedure for a party to request such a recording. However as there is no record of an official request for a recording, I find that the document submitted by the tenant is not based on an official recording of the proceeding and as such, provides little value as a form of evidence in support of her claims in her Application for Review Consideration.

In response to the request on the Application for Review Consideration form to list each item of new and relevant evidence and state why it was not available at the time of the hearing and how it is relevant the tenant responds by stating "Transcript of the hearing contains evidence of fraud and occurred at the time of the hearing, so was not available then." As such, I find the tenant has not identified any evidence that is new or relevant in her Application and therefore I find she has not established this as a ground for a new hearing.

In her submission regarding fraud the tenant has submitted quite lengthy arguments regarding 9 points that she submits constitute fraud on the part of the landlord. In fact,

upon review of all of her submission these issues identified are all issues that the tenant provided evidence on and were raised in the hearing and the tenant had an opportunity to address during the hearing with the exception of her first point. The nine points include:

1. She was not served the landlord's evidence for the hearing;
2. Splitting of rental payments;
3. The landlord's testimony regarding the carpets;
4. Payment of rent for January 2013;
5. Landlord's entry into the unit;
6. Disturbing other tenants;
7. The tenant's complaints about other tenants;
8. Requests for a fridge; and
9. Replacement of mailbox keys.

In regard to the tenant's submission that she did not receive any evidence from the landlord there is no record in the decision, or even in the tenant's own "transcript" of the proceeding that the tenant identified to the Arbitrator that she had not received the landlord's evidence. This issue should have been raised by the tenant in the original hearing and by failing to raise it in the hearing I find the tenant cannot now rely on this as a ground for review based on fraud.

As to the other 8 items above, I find that the tenant is either disagreeing with the landlord's testimony or attempting to re-argue her own position. The original hearing was the tenant's opportunity to disagree with the landlord's testimony and ensure that all of her evidence in response to her position was provided and noted for the Arbitrator.

From the decision of March 12, 2013, I note the Arbitrator makes several references to the tenant's failure to provide sufficient evidence of her financial claim and from the evidence that was submitted it did not support a decision, on the financial claim, in the tenant's favour. Likewise the landlord had failed to provide sufficient evidence to establish cause to end the tenancy, which resulted in the tenant's success in having the Notice to End Tenancy cancelled.

The tenant has also submitted substantial notes on her belief that the Arbitrator was biased in favour of the landlord, however, this is not an allowable ground for Review Consideration and I find this submission to not be relevant to the claim of fraud.

While bias is not a ground for Review Consideration I have read the tenant's submission on this issue and find the tenant has indicated that she disagrees with the Arbitrator's findings and that these findings were based on the fraud she alleges the landlord perpetrated. Just because the tenant disagrees with the Arbitrator's findings and decisions is not evidence of bias. The tenant submits that the Arbitrator also repeatedly asked her the same questions and then would cut her off in her attempts to answer.

If I were to consider the tenant's "transcript" document (as noted above, not an official transcript) that she has submitted, I agree the Arbitrator repeatedly asked the tenant the same question and gave the tenant specific instructions on what she was looking for but the tenant repeatedly provided responses to issues that had already been dealt with and when she seemed to refuse to respond to the Arbitrator's specific questions the Arbitrator had to move the hearing along.

From this I would find that the Arbitrator took great lengths to ensure that the tenant provided testimony on all relevant issues that were before her during the hearing. I also note from the tenant's "transcript" document that the Arbitrator offered an opportunity to adjourn the hearing to a future date if more time was needed and neither party sought such an adjournment.

For the above reasons, I find the tenant has failed to establish any ground for a new hearing.

Decision

I dismiss the tenant's Application for Review Consideration. The decision made on March 12, 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: April 12, 2013