



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: FF MNR OPR

Introduction

On April 12, 2013 Arbitrator XXXXX provided a decision on the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order for unpaid rent. The hearing had been conducted on April 12, 2013.

That decision granted the landlord an order of possession, effective two weeks after service and a monetary order in the amount of \$940.00. 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 his Application for Review Consideration that he was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond his control and he has evidence that the director's decision was obtained by fraud.

Issues

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

If the tenant has submitted his Application within the required time frames it must be decided whether the tenant is entitled to have the decision of April 12, 2013 suspended with a new hearing granted because he has provided sufficient evidence to establish that he was unable to attend the hearing for unexpected reasons that were beyond his control or he has evidence the landlord 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 2 days after a copy of the decision is received by the party, if the decision relates to an order of possession for a landlord or tenant; unreasonable withholding of consent by a landlord regarding assignment or subletting or a landlord's notice to end tenancy for non-payment of rent.

From the decision of April 12, 2013 the issues before the Arbitrator were related to the landlord's notice to end tenancy for non-payment of rent. As such, I find the decision and order the tenant is requesting a review on allowed the tenant 2 days to file his Application for Review Consideration.

From the tenant's submission he states that he received the April 12, 2013 decision on April 19, 2013 and filed his Application for Review Consideration with the Residential Tenancy Branch on April 23, 2013 (4 days after receipt of the decision). I find the tenant has failed to file his Application for Review Consideration within the required timelines.

Even if I were to consider the tenants submitted grounds for review I find that while the tenant submitted that he was never "given any info to regards of a hearing" he did not provide any response to the statement in the decision that stipulates that the landlord served the tenant with notice of the hearing on March 18, 2013 and that this service was witness.

He also did not provide any response to the question of what testimony or additional evidence that he would have provided if he attended the hearing and as such, I have no ability to determine if the decision would have been different had he attended the hearing. Therefore, I find the tenant has failed to establish sufficient ground for a new hearing based on being unable to attend.

The tenant also submits that the landlord obtained the decision based on fraud because he states the landlord told him on April 9, 2013 that he could pay the rest of April and March rent in installments.

However, again, the tenant did not complete the remaining questions on the Application for Review Consideration indicating how the person submitting the evidence knew it was false or how the false information was used to get the desired outcome.

I also note that there is no mention of any such agreement in the April 12, 2013 decision and that the tenant provided no additional evidence to support his statements and as such I find the tenant has failed to provide sufficient evidence to establish fraud as a ground for a new hearing.

Decision

For the above note reasons, I dismiss the tenant's Application for Review Consideration.

The decision made on April 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 29, 2013