



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC MNSD

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 landlord should be given an extension of time to apply for review. If allowed more time to apply for review, the landlord has requested review on the following grounds:

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.

The landlord received the decision and order on March 22, 2013 and applied for review consideration on April 4, 2013.

The landlord submitted she was out of the country visiting her mother-in-law, who was hospitalized. The landlord did not have a cell phone or land-line that she could use to call into the hearing.

The landlord indicated that she would dispute the tenant's testimony that they cleaned the rental unit. A receipt for cleaning, and garberator replacement were submitted; the landlord indicated that these documents had been previously submitted as evidence. The landlord supplied a June 2012 invoice for restoration services.

A copy of the landlord's itinerary for travel, departing on February 25, 2013 to China, returning on March 22, 2013; was supplied as evidence. The flight was booked on January 2, 2013. The landlord's application for review consideration has also been based on the landlord's inability to call into the hearing from China.

The decision issued on March 5, 2013, indicated that the landlord's agent attended the hearing and made numerous submissions in relation to the landlord's claim and in response to the tenant's cross application claim made.

Analysis

The landlord had fifteen days from the time she received the decision and order to submit the application for review consideration. The landlord submitted her application within the required time-frame; therefore, an extension of time to request review consideration was not required.

In relation to the claim that the landlord was unable to attend the hearing due to circumstances that could not be anticipated or were beyond her control; the evidence before me shows that the landlord's agent attended the hearing and made submissions on behalf of the landlord. Further, once served with notice of the February 27, 2013 hearing, if she had also wished to participate in the hearing the landlord could have taken steps to ensure she had use of a telephone during the scheduled hearing time. I find that the fact the landlord was in China did not prohibit her from locating a telephone. Therefore, the request for a review hearing on this ground is dismissed.

A review hearing may be granted on this basis if the applicant can prove that:

- The landlord has evidence that was not available at the time of the hearing;
- the evidence is new,
- the evidence is relevant to the matter before the arbitrator,
- the evidence is credible, and
- the evidence would have had a material effect on the decision.

The invoices evidence supplied by the landlord were either before the arbitrator at the February 27, 2013 hearing or issued well in advance of the hearing. I find this is not new evidence that was unavailable at the time of the original hearing and I dismiss the request for a review hearing based on this ground.

Conclusion

I find that the decision and order made on March 05, 2013 are confirmed.

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 15, 2013

Residential Tenancy Branch