



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR OPC OPR

Introduction

On April 19, 2013 Arbitrator XXXX provided a decision on the landlords' Application for Dispute Resolution seeking an order of possession for cause and for unpaid rent and for a monetary order. The hearing had been conducted on April 18, 2013.

That decision granted the landlords an order of possession and a monetary in the amount of \$2,825.00. The tenants 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 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.

If the tenants have submitted their Application within the required time frames it must be decided whether they are entitled to have the decision of April 19, 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 landlords 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 or order is received by the party, if the decision relates to an early end of tenancy; 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 19, 2013 the issues before the arbitrator were related to the landlords' notice to end tenancy for non-payment of rent. As such, I find the decision the tenants are requesting a review on were allowed 2 days to file their Application for Review Consideration.

From the tenants' submission they received the April 19, 2013 decision on April 22, 2013 and filed their Application for Review Consideration with the Residential Tenancy Branch on April 25, 2013 (3 days after receipt of the decision and order). I find the tenants have failed to file their Application for Review Consideration within the required timelines.

However and despite the tenants not seeking an extension to file their Application for Review Consideration, the tenants submit that there were given conflicting and confusing information from Residential Tenancy Branch staff and considering the tenants did submit their Application for Review Consideration only one day beyond the deadline, I grant an extension of 1 day in the interest of administrative justice.

The tenants submit they while they had submitted evidence to the hearing the arbitrator did not consider it. The evidence included email correspondence between the parties and a witness statement. However, this ground for review specifically speaks to new evidence that did not exist or could not have been discovered with due diligence before the hearing.

This ground does not include evidence that was before the arbitrator at the hearing and whether or not he considered it. As such, I find the tenants have not provided any new evidence, in this case, that would warrant a new hearing but rather they are attempting to re-argue their case.

In relation to the tenants' claim the landlord obtained the decision based on fraud, the tenants submit what appears to be their position on the issues related to the landlord's Application for Dispute Resolution that should have been presented in the hearing.

For example, the tenants submit responses to various issues during the tenancy that they state are fraudulent, however I find that the opportunity for the tenants to raise these issues was during the hearing. There is no evidence of fraud if the tenants' positions were not raised in the hearing and if they were raised in the hearing and not considered by the arbitrator I cannot find that the decision was based on fraud. But rather that the tenants are again attempting to re-argue their case.

Decision

For the reasons noted above, I dismiss the tenants' Application for Review Consideration.

The decision made on April 19, 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: May 01, 2013