



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNR MNSD

Introduction

On April 26, 2013 Arbitrator XXXXX provided a decision on cross Applications for Dispute Resolution. Both parties were seeking monetary claims against the other. The hearing was conducted over several dates including March 12, 27, 28, April 15, 16, and 26 2013.

That decision granted the landlord an award of \$1,207.00 and the tenant an award of \$1,850.00. A monetary order was issued to the tenant in the amount of \$643.00 representing the offsetting of the landlord's award against the tenant's award. The landlord 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 landlord submits in her Application for Review Consideration 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 landlord has submitted her Application for Review Consideration within the legislated time frames required for reviews.

If the landlord has submitted her Application within the required time frames it must be decided whether she is entitled to have the decision and order of April 26, 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 or order 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 April 26, 2013 the issues before the Arbitrator were related to the landlord's claim for damages and unpaid rent after the tenancy had ended and the tenant's claim for return of the security deposit. As such, I find the decision and order the landlord is requesting a review on allowed the landlord 15 days to file her Application for Review Consideration.

From the landlord's submission she received the April 26, 2013 decision on May 3, 2013 and filed her Application for Review Consideration with the Residential Tenancy Branch (RTB) on May 21, 2013 (18 days after receipt of the decision). However, as the 15th day fell on Saturday, May 18, 2013, a day the RTB was closed, the earliest business day was May 21, 2013 and as such the deadline is extended to May 21, 2013. I find the landlord has filed her Application for Review Consideration within the required timelines.

The landlord submits in her Application for Review Consideration a large volume of documents including written submissions. While the landlord identified that she has new and relevant evidence and evidence that the decision was obtain by fraud she did not answer any of the questions on the Application for Review Consideration.

As such, in the section regarding new and relevant evidence the landlord does not provide anywhere in her extensive written submissions the answer to the specific requirement to state why the information was not available at the time of the hearing and how is it relevant.

Instead the landlord has provided many documents including copies of cheques from 2012 and earlier; receipts from 2012; email correspondence from 2012 and earlier; Canada Post tracking information from December 2012; undated Residential Tenancy

Policy Guidelines but she has not indicated anywhere why this evidence was not available prior to the hearings. Further, a review of the original file shows that some of this evidence was in the original hearing and before the arbitrator at that time.

As such, while it appears the evidence **may** have been relevant I find the landlord has failed to establish that the evidence was not available prior to or in time for any one of the original 6 hearing dates.

Again the landlord did not specifically respond to the questions on the Application for Review Consideration relating to fraud but she did submit in her written submission that there were inconsistencies in the tenant's testimony; her witness's testimony; and in the arbitrator.

The landlord submits that she appreciates "this 'REVIEW OPPORTUNITY' with a new pair of eyes on the facts!" I note, however, a Review Consideration is not an opportunity for the Review applicant to reargue her claim or to criticize the findings of the arbitrator who rendered the decision.

In support of this review the landlord indicates she has provided a "critique" of the decision of the arbitrator and new evidence to support her critique. In the document that is referred to as the critique the landlord has used colour coding to highlight the following items:

1. Incorrect reporting & misinterpretation of the arbitrator – highlighted green;
2. The landlord's evaluation of what was written by the arbitrator – highlighted pink;
3. Non-truths from the tenant – highlighted red;
4. Original evidence – highlighted yellow;
5. New Evidence – turquoise; and
6. Landlord's comments – no colour.

As the landlord has submitted her Application for Review Consideration based on new and relevant evidence and fraud, I find the landlord's commentary on the arbitrator's reporting; misinterpretation and her evaluation of what was written by the arbitrator to be irrelevant to the issues of either fraud or new evidence.

As I have already determined that the landlord has failed to establish that any new evidence exists because she has not provided any evidence, or even an explanation, as to why the evidence she is calling new evidence was not available prior to the original hearings, the new evidence she refers to in this section of her submission is again not new evidence.

As such, the only item in the “critique” that the landlord has put forward that may be relevant to a Review Consideration is her assertion that the tenant submitted “non-truths”. If these “non-truths” are to be considered fraud the landlord must have provided sufficient evidence to establish that the tenant provided false information; that the tenant knew it was false; and that the false information was used to get the desired outcome.

In her “critique” the landlord has identified 20 “non-truths” that she attributes to the tenant. In the case of 15 of these “non-truths” the landlord provides no evidence to support her position that the information was false other than her own interpretation of events or belief that the tenant lied.

For the remaining 5 items the landlord has submitted what she has characterized as new evidence to refute what the tenant submitted or testified to. However, in each of those 5 cases the landlord has failed to provide any evidence or explanation how of how it is false; that the tenant knew it to be false and how the information was used to obtain the decision. The issues identified by the landlord are:

1. In the 7th paragraph of page 3, the landlord submits: “Ms. A.L. claims to have not made the referral of Terrance”. Arbitrator XXXXX wrote in the paragraph: “The landlord found a new tenant for December, perhaps by a referral involving the tenant....”;
2. That “the only thing moved into the garage by one of the movers was my bike which was hung from the ceiling and not on the floor in reference to paragraph 6 on page 9. The landlord, in her Application for Review Consideration, refers to evidence from the original hearing and her “new” evidence of a photograph of a bike hanging in her garage but again does not explain what information was false; how the tenant knew it was false; or how it impacted the original decision;
3. The receipt of registered mail on December 24, 2012 instead of December 28, 2012;
4. The tenant failing to provide a carpet cleaning receipt; and
5. When the tenant submitted her Application for Dispute Resolution.

For these reasons I find the landlord has failed to provide any evidence to establish the decision was based obtained based on fraud.

In fact in regard to the entire content of the landlord’s Application for Review Consideration she asserts that the arbitrator erred in his decision and in his recording of facts and testimony; that he made erroneous determinations. The landlord clearly disagrees with the decision of the arbitrator but has provided no evidence to establish grounds for a new hearing to be granted.

Decision

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

The decision made on April 26, 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 24, 2013