



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: LAT MNDC RR

Introduction

This Application was filed by the tenant on May 1, 2013, seeking a Review Consideration of the Decision dated April 4, 2013 and having received that decision by mail April 26, 2013. The Decision dismissed the tenant's application, without leave to reapply. This Application was filed within the timeline specified under section 80 of the *Act*.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of a 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 has applied on the second and third grounds.

Issues

- Has the tenant provided evidence that the tenant has new and relevant evidence that was not available at the time of the original hearing?
- Has the tenant provided evidence that the director's decision was obtained by fraud?

Facts and Analysis

The Application contains information under section C2, on why the tenant has new and relevant evidence with respect to the hearing held on January 14, 2013 and reconvened on April 4, 2013.

The tenant writes in her Application:

“Provided additional evidence with my previous review of April 4, 2013, unfortunately it was not accepted and excluded as it wasn’t submitted within the 5 days of the original hearing. During the first hearing, the landlord was not truthful in the verbal evidence they submitted, repairs were not completed as they testified. Photo’s on file will prove they have provided incorrect information in the hearing, therefore, they have lied in both hearings.

The landlord also submitted additional evidence on March 26th, 2013 which needs to be added in this new hearing, you should have had a copy forwarded to your office prior to the April 4th hearing. the worksheet proves their contractor didn’t seal the pipes until March 2013. Provided an additional 15 pages of Cigarette and Marijuana activity – this along with all other activity reports prove a loss of quiet enjoyment and the retro-active rent abatement should be allowed. Also the landlord needs to evict and transfer the tenant in #101 as she is the one causing the loss of quiet enjoyment.”

[Reproduced as written]

The Application contains information under section C3, from the tenant alleging that the director’s decision was obtained by fraud.

The tenant writes in her Application:

“I’ve provided a letter to Metro Vancouver Housing on August 7, 2012 outlining all the incorrect information which they insist they have completed, they have not replied to that letter nor did they come or call to inquire about their discrepancies. They continue to lie about the work completed in my suite. The only two repairs they did concerning the drifting second hand smoke from infiltrating my suite were – foam backing to electrical outlets (done within a reasonable amount of time) and sealing of the pipes (not done for 1 year and 5 weeks) after my original complaint. This repair was not within a reasonable amount of time and the landlord needs to pay for this delay, they are putting my health in jeopardy. The landlord worksheet proves the pipes in my suite were not sealed in 2011 or 2012 but complete in March 2013 and no other repairs were done concerning the drifting smoke.”

[Reproduced as written.]

The tenant submitted a fifteen page document entitled “Additional Marijuana/Cigarette Activity after delivery of my 4th List on December 7, 2012” as evidence. The dates of the entries in that document are between October 22, 2012 and April 30, 2013. Pages 13, 14 and 15 of that document contain entries which are dated after the date of the April 4, 2013 reconvened hearing.

Decision

Based on the above, the evidence and Application submitted, and on a balance of probabilities, I find the following.

In order to be successful on the second ground for review, the tenant must prove that new and relevant evidence exists that was not available at the time of the original hearing. The tenant writes:

“Provided additional evidence with my previous review of April 4, 2013, unfortunately it was not accepted and excluded as it wasn’t submitted within the 5 days of the original hearing. During the first hearing, the landlord was not truthful in the verbal evidence they submitted, repairs were not completed as they testified. Photo’s on file will prove they have provided incorrect information in the hearing, therefore, they have lied in both hearings.

The landlord also submitted additional evidence on March 26th, 2013 which needs to be added in this new hearing, you should have had a copy forwarded to your office prior to the April 4th hearing. the worksheet proves their contractor didn’t seal the pipes until March 2013. Provided an additional 15 pages of Cigarette and Marijuana activity – this along with all other activity reports prove a loss of quiet enjoyment and the retro-active rent abatement should be allowed.

Also the landlord needs to evict and transfer the tenant in #101 as she is the one causing the loss of quiet enjoyment.” [Reproduced as written.]

The tenant refers to “photos on file” but failed to submit those photos in evidence with her Application for Review. The tenant also refers to a worksheet but has not submitted that worksheet in evidence with her Application for Review. Even if the photos and worksheet were on the original file; that would not be evidence of “new” evidence when filing an application under the “new and relevant evidence” ground.

The tenant submitted fifteen pages of evidence which is a “Marijuana/Cigarette Activity” document; however this document has entries dating back to October 22, 2012 which does not make the document “new” either. Therefore, I find the tenant has provided

insufficient evidence to support her position that new and relevant evidence exists that was not available at the time of the original hearing. A lack of preparation or due diligence on the part of the tenant, or lack of adherence to the rules of procedure regarding submission of evidence prior to the hearing does not constitute “new and relevant” evidence after the hearing. Therefore, **I dismiss** this portion of the tenant’s Application due to insufficient evidence.

In order to be successful on the third ground for Review, the tenant must prove, based on a balance of probabilities, that the director’s decision was based on fraud. The tenant writes:

“I’ve provided a letter to Metro Vancouver Housing on August 7, 2012 outlining all the incorrect information which they insist they have completed, they have not replied to that letter nor did they come or call to inquire about their discrepancies. They continue to lie about the work completed in my suite. The only two repairs they did concerning the drifting second hand smoke from infiltrating my suite were – foam backing to electrical outlets (done within a reasonable amount of time) and sealing of the pipes (not done for 1 year and 5 weeks) after my original complaint. This repair was not within a reasonable amount of time and the landlord needs to pay for this delay, they are putting my health in jeopardy. The landlord worksheet proves the pipes in my suite were not sealed in 2011 or 2012 but complete in March 2013 and no other repairs were done concerning the drifting smoke.”

[Reproduced as written]

For the tenant to be successful on the third ground, the tenant must provide sufficient evidence to support that the director’s decision was based on fraud. The tenant refers to a letter submitted to Metro Vancouver Housing on August 7, 2012 but failed to submit a copy of that letter with her Application for Review. Furthermore, the tenant claims they (the landlord) “continue to lie” but have failed to provide evidence to support that claim.

In regard to the tenant’s claim of fraud, I find that the tenant’s Application merely consists of the tenant attempting to re-argue the matter. The fact that the tenant disagrees with the conclusion reached by the Arbitrator does not amount to fraud. **I find** the tenant has provided insufficient evidence to prove her claim that the director’s decision was obtained by fraud. Therefore, **I dismiss** this portion of the tenant’s Application due to insufficient evidence.

As the tenant’s Application has been dismissed on both grounds, the decision made on April 4, 2013, **stands and remains in full force and effect.**

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 07, 2013

Residential Tenancy Branch