



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

Introduction

This Application was filed by tenant CW, on behalf of both tenants on May 23, 2013, seeking a Review Consideration of the Order dated May 17, 2013 and having received that order on May 22, 2013. The order granted the landlord a monetary order in the amount of \$860.00 and an order of possession effective not later than 2 days after service of the Order on the tenants.

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 tenants have applied on the second and third grounds.

Issues

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

Facts and Analysis

The Application contains information under section C2, on why the tenants have new and relevant evidence and why it was not available at the time of the hearing and how it is relevant.

The tenants write in their Application:

"The Landlord, Mrs. YC, contacted me for the first at 6:40 pm on Tuesday May 21, 2013."

The Application contains information under section C3, from the tenants alleging that the director's order was obtained by fraud.

The tenants write in their Application:

- "1) Lease Agreement submitted – We specifically left the "entered into Date" empty. –We made it very clear that we would "enter" into an Agreement once the Suite was cleaned.
- 2) Proof of Service Document – Landlord had to of forged Mr G's Signature
- 3) Landlord – YC – We have never met this Person to Date – May 21, 2013 – TC would not get YC to sign 'Intent to Rent' for May 2013 during 5 Days we had to pay the Rent. Finally signed one on May 13, 2013 mid afternoon 2:32 pm. Her Car not here that day & time"

[Reproduced as written]

Regarding how the tenants think the false information was used to get the desired outcome, they write in their Application:

"TC falsified all the Information so we would be made to Move from the Lower of ### XXXX Ave, then to perform any Duties or introduce us to this YC. * TC even Forged a Ministry of Social Development Document on May 13, 2013. * * Mrs. YC knew nothing of the 5 notices I put up on Door."

The tenants also submitted a one-page typed letter into evidence, a 10 Day Notice, a condition inspection report, the proof of service document for the 10 Day Notice, the monetary order, the order of possession, a letter from the landlord requesting payment pursuant to the monetary order, and a “Shelter Information” document.

In the one-page letter from the tenants, the tenants confirm that they received the 10 Day Notice as they indicate that they attended the RTB office in Victoria to speak about the 10 Day Notice. There is no reference to the tenants submitting an application to dispute the 10 Day Notice or that they paid the rent within 5 days of receiving the 10 Day Notice.

The rent receipt on the “Shelter Information” document reads “To be received from” the tenants the amount of \$375.00 and is dated for May 12, 2013. It does not state that amount has been paid.

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 tenants must prove that new and relevant evidence exists that was not available at the time of the original hearing. The tenants write:

“The Landlord, Mrs. YC, contacted me for the first at 6:40 pm on Tuesday May 21, 2013.”

[Reproduced as written]

I find this statement from the tenants confusing and that it **does not** constitute new and relevant information that was not available at the time of the original hearing. **I find** the tenants have provided insufficient evidence to support their position. A lack of preparation or due diligence on the part of the tenants or failing to dispute the 10 Day Notice, or failing to submit evidence upon receiving Notice of a Direct Request Proceeding, does not constitute “new and relevant” evidence after the decision is made and order are issued. Therefore, **I dismiss** this portion of the tenants’ Application due to insufficient evidence.

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

- "1) Lease Agreement submitted – We specifically left the "entered into Date" empty. –We made it very clear that we would "enter" into an Agreement once the Suite was cleaned.
- 2) Proof of Service Document – Landlord had to of forged Mr G's Signature
- 3) Landlord – YC – We have never met this Person to Date – May 21, 2013 – TC would not get YC to sign 'Intent to Rent' for May 2013 during 5 Days we had to pay the Rent. Finally signed one on May 13, 2013 mid afternoon 2:32 pm. Her Car not here that day & time"

[Reproduced as written]

For the tenant to be successful on the third ground, the tenants must provide sufficient evidence to support that the director's decision was based on fraud. In regard to the tenants' claim of fraud, I find that the tenants' Application merely consists of an argument that the tenant had the opportunity to present by submitting evidence in response to the Direct Request Proceeding or by disputing the 10 Day Notice, both of which the tenants failed to do.

It is clear from the decision dated May 17, 2013 that the Arbitrator considered that the tenants did not dispute the 10 Day Notice or pay the rent in arrears within 5 days of receiving the 10 Day Notice. Furthermore, it is clear from the tenants' evidence submitted in this Application, that the tenants did receive the 10 Day Notice, and did not dispute the 10 Day Notice. The tenants also failed to provide any evidence that the full rent arrears were paid in accordance with the 10 Day Notice. The Shelter Information form submitted indicates "To be received from" the tenants, but does not state that the amount has been paid.

The fact that the tenants disagree with the conclusion reached by the Arbitrator does not amount to fraud. The tenants' opportunity to dispute the 10 Day Notice was within five days of receiving the 10 Day Notice which the tenants failed to do. **I find** the tenants have provided insufficient evidence that the director's decision was obtained by fraud and that the tenants are attempting to argue the matter after the fact, having failed to submit any evidence prior to the decision being reached by the Arbitrator on May 17, 2013 or dispute the 10 Day Notice. Therefore, **I dismiss** this portion of the tenants' Application due to insufficient evidence.

As the tenant's Application has been dismissed on both grounds, the decision and orders made on May 17, 2013, **stand and remain 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 27, 2013

Residential Tenancy Branch