



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNDC

Introduction

On April 26, 2013 a dispute resolution hearing was conducted to resolve a dispute between these two parties. The Tenant had applied for a monetary order for the loss of quiet enjoyment. The Tenant appeared by conference call and gave undisputed testimony. The Landlord did not attend. The Tenant's Application was granted and a monetary order was issued. The Landlord has applied for review of this decision.

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 applicant has applied for an extension of time in which to file for review on May 22, 2013. The applicant states that she was in Toronto from May 1 to May 18, 2013 and did not receive a copy of the decision and order until May 18, 2013 when she returned. The applicant has provided copies of her "Air Canada Itinerary" which states this. I find that an extension of time is unnecessary as the applicant cannot be said to have filed beyond the statutorily prescribed timeframe which is based on receipt of the decision or order. The applicant made an application for review 4 days after receiving the decision and order.

The applicant relies on sections 79 (2) (a) and (b) of the Residential Tenancy Act.

Issues

Was the Landlord unable to attend the hearing because of circumstances that could not be anticipated and were beyond her control?

Does the Landlord have new and relevant evidence that could change the decision?

Facts and Analysis

The applicant states that “I did not receive the letter stating date & time to attend hearing. I was in Toronto at the time of receiving order & decision. I got back & see this letter. I would like my side to be heard.” The applicant further states that “I have pictures of our home. The Tenant was paying less (reduced) rent. I never received any letters stating what need to be fixed. Pictures are taken from her evidence, months after her moving in. Manipulating pictures to look bad.”

The applicant has also submitted a written statement which states, “...I did not receive a Canada Post hanger or note from Tenant in January. If you look at her evidence, it clearly states that her mail was sent back to sender (tenant), we live on a farm near the mountain and it is windy in winter months. We did receive Canada Post note in late April, but it only contained pictures and copies of receipts only.”

I find that the applicant has failed to provide sufficient evidence to satisfy me that no Canada Post Registered Mail “hanger or note” was left for the applicant. A review of the Tenant’s evidence confirms the Arbitrator’s finding that a Canada Post Registered Mail package was accepted and sent on January 29, 2013. Further review of the evidence showed an on-line print out of the attempts made by Canada Post to deliver the package. The applicant has failed provide any evidence to the contrary that would lead me to believe that the no notice was left.

The applicant has also stated that there is new and relevant evidence that could lead to a change in the original decision. The applicant states for this that she has, “pictures and itinerary.” The applicant has not provided any details of how her itinerary for May 1 to 18, 2013 has a bearing on the tenancy prior to the hearing date. The applicant’s details also state that “the Tenant was paying less (reduced) rent, I never received any letters stating what needs to be fixed, Pictures are taken from her evidence, months after her moving in, manipulating pictures to look bad.” The applicant has failed to provide any details of what if any factors the pictures would have in the original decision.

Decision

I find that the applicant has failed to provide sufficient details to support her claim for review on both grounds. The application for review is dismissed.

The decision made on April 29, 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 27, 2013

Residential Tenancy Branch