



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: MNR OPR

Introduction

On April 23, 2013, under the Direct Request procedure, a decision was issued by the Arbitrator and the landlord was provided an Order of Possession and Monetary Order for unpaid rent.

Section 79(2) under the *Residential Tenancy Act* provides that a party to the dispute may apply for a review of the decision. The decision and Orders issued on April 23, 2013 name one tenant; however, two tenants are named on the Application for Review. I have amended this Application for Review to exclude the party not named on the decision and Orders.

The tenant indicated she was served with the Order(s) by the landlord on April 30, 2013. I accept that the tenant has filed this Application for review within the time limit provided under section 79 of the Act.

In filing this Application for Review, the tenant indicates she has two grounds for review under section 79 of the Act:

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 evidence that the director's decision or order was obtained by fraud.

There is no hearing held in the Direct Request procedure, rather it is a proceeding done by written submission of the landlord only. If the landlord obtains a decision or Order based upon fraudulent evidence the tenant may apply for a review hearing on the basis of fraud.

In light of the above, I dismiss the first ground for review and I proceed to consider whether the tenant has evidence that the decision and Orders issued on April 23, 2013 were obtained by fraud.

Issues

Does the tenant have evidence that the landlord obtained the decision and/or Order(s) by fraud?

Background and Evidence

The landlord submitted in its Application for Dispute Resolution filed March 26, 2013 that the tenant failed to pay \$250.00 of the \$550.00 in rent due for the month of March 2013. The tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent, in person, on March 14, 2013. The tenant was to contact the landlord's agent when the funds were available but failed to make contact by March 21, 2013 as agreed. The landlord was provided the Order of Possession and Monetary Order based upon the unpaid rent of \$250.00.

In filing this Application for Review the tenant indicates that \$750.00 was owed to the landlord as of April 1, 2013 and that the tenant had the money, but "the landlord did not come by to pick [up] April's rent".

Analysis and Decision

The tenant did not deny that she received a 10 Day Notice to End Tenancy for Unpaid Rent on March 14, 2013 with a stated effective date of March 25, 2013. Pursuant to section 46 of the Act, and as stated on the 10 Day Notice, the outstanding rent had to be paid to the landlord within five (5) days of receiving the 10 Day Notice in order to nullify the Notice. The tenant appears to acknowledge in her submission that at least some of the rent for March 2013 was still outstanding as of April 1, 2013.

By failing to pay all of the outstanding rent by March 19, 2013 (five days after the 10 Day Notice was served) or by March 21, 2013 as the landlord permitted her to do, the tenancy ended for unpaid rent on the stated effective date of March 25, 2013. I find the landlord was entitled to receive an Order of Possession when the landlord applied for such on March 26, 2013. I find the tenant has not provided sufficient evidence to conclude the Arbitrator's decision or the Orders issued by the Arbitrator were obtained by fraud. Therefore, I dismiss the tenant's request for a review hearing.

Conclusion

The tenant's Application for Review has been dismissed. The decision and Orders issued April 23, 2013 by the Arbitrator stand and remain enforceable.

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 07, 2013

Residential Tenancy Branch