



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION ON APPLICATION FOR REVIEW CONSIDERATION

Dispute codes: FF MNDC MNR

Introduction

This is an application by the tenant for a review of a decision and order of the director dated June 12, 2013.

The tenant applied for a review on the ground that they have new and relevant evidence that was not available at the time of the original hearing.

Issues

Has the tenant provided sufficient evidence to support the indicated ground for review?

Facts and Background

Original Hearing and Decision

A hearing was conducted on June 12, 2013, on the landlord's application for dispute resolution for monetary compensation for loss of revenue for the time period of July 1-14, 2012; the hearing resulted in the landlord being granted a monetary order for \$424.84, comprised of \$374.84 for rent owed and the filing fee of \$50.

The Arbitrator in his Decision mentioned that the landlord claimed the tenant never started the tenancy which was due to begin on July 1, 2012, and did not submit notice in accordance with section 45 of the Residential Tenancy Act (the "Act").

The tenant submitted that strong chemical smells rendered the rental unit uninhabitable and therefore he returned the keys without moving in.

Applicant/tenant's submission-new and relevant evidence not available at the time of the hearing

In the case before me and in support of their application for review, the tenant submitted the following:

- a letter from the tenant to the landlord on June 20, 2013, requesting a copy of the original tenancy agreement and condition inspection report;
- a letter dated June 21, 2013, from the tenant to the landlord, arguing that the landlord acknowledged that the tenant had never been given the

original tenancy agreement and arguing that the condition inspection report could not be located;

- a letter dated July 26, 2012, from the tenant to the landlord requesting a return of the tenant's security deposit, and explaining to the landlord why they were not moving into the rental unit; and
- a handwritten letter to the landlord.

The tenant argued that he was never given a tenancy agreement by the landlord or the signed condition inspection report, although the landlord had many opportunities to do so.

The tenant also submitted that the letter of July 26, 2012, was not submitted as they did not know that it would be relevant for the hearing and also did not refer to it in the hearing as they did not know the Residential Tenancy Act.

Analysis

Under Residential Tenancy Branch Policy Guidelines, new evidence includes evidence that has come into existence since the dispute resolution hearing or evidence which the applicant could not have discovered with due diligence before the hearing. Further the applicant/tenant is required to explain why the evidence was not available.

In support of his application for review, the handwritten letter submitted by the tenant was additionally submitted by the landlord and was before the Arbitrator at the hearing on June 12, 2013. Therefore this document was not new.

As to the letters the tenant sent to the landlord after the hearing, I find these are not relevant to the issue contained in the landlord's application. The issue addressed by the Arbitrator was whether the tenant had given sufficient notice to the landlord that he was ending the tenancy, as there was no dispute that the tenant had signed the tenancy agreement.

Thus whether the tenant had a copy of the tenancy agreement or the inspection report I find to be irrelevant to the issue of whether sufficient written notice of ending the tenancy was given by the tenant.

Additionally, the tenant had the opportunity to make these submissions during the hearing and failed to do so.

I therefore find the applicant/tenant has submitted insufficient evidence to support their application for review.

I further find, pursuant to Section 81 (1) of the Act, the tenant's application for review discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied.

Conclusion

I therefore dismiss the tenant's application for review and confirm the original decision and order of June 12, 2013.

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*

Dated: July 05, 2013

Residential Tenancy Branch