



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR

Introduction

This review consideration decision is in response to an application for review by the Tenant filed pursuant to section 79 of the *Residential Tenancy Act (Act)*. Specifically, the Tenant is requesting a review of the decision made by an Arbitrator on June 25, 2013. In her decision, the Arbitrator determined that the Landlord was entitled to a monetary order, in the amount of \$2,968.26, for unpaid rent.

Section 79 of the *Act* reads:

- (1) A party to a dispute resolution proceeding may apply to the director for a review of the director's decision or order.
- (2) A decision or an order of the director may be reviewed only on one or more of the following grounds:
 - (a) a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control;
 - (b) a party has new and relevant evidence that was not available at the time of the original hearing;
 - (c) a party has evidence that the director's decision or order was obtained by fraud.

The Tenant is requesting the review on the basis that she has new and relevant evidence that was not available at the time of the hearing, pursuant to section 79(2)(b) of the *Act*.

Preliminary Matter

The Tenant requested an extension of time to apply for the review.

The evidence shows that the Tenant submitted her Application for Review Consideration on July 16, 2013. In her Application for Review Consideration the Tenant declared that she received the decision and Order on July 06, 2013. As the Tenant appears to have submitted the Application within the legislated time limit, I find there is no need to consider her request for an extension of time to submit the Application.

Issues

Has the Tenant established grounds for a review of The Arbitrator's decision/Order, pursuant to section 79(2)(b) of the *Act*?

Facts and Analysis

In her decision the Arbitrator concluded that the Tenant was residing in the rental unit in January and remained there for a portion of February.

The Arbitrator noted that during the hearing the Tenant stated that she moved out on December 23, 2012. In the Application for Review Consideration the Tenant declared that she moved out on January 15, 2013. In support of this declaration the Tenant submitted a gas bill which shows that the gas account was terminated on January 16, 2013. In support of this declaration the Tenant also submitted a copy of a hydro bill, however I was unable to find anything on this bill that shows the hydro account was terminated.

I find that the date the Tenant moved out of the rental unit is largely irrelevant to the Arbitrator's decision. The relevant issue is when the Tenant informed the Landlord the rental unit had been vacated and whether the Tenant gave the Landlord proper notice to end the tenancy. I find, therefore, that the hydro and gas bills cannot be considered new and relevant evidence.

In her decision the Arbitrator noted that the Tenant returned the keys and a letter from the Tenant on February 12, 2013. There is nothing in the decision that indicates the Tenant disputed this testimony. Although it is not specifically stated in her decision, I find it reasonable to presume that The Arbitrator concluded that this information was accurate and that this was when the Tenant gave up legal possession of the rental unit. The Tenant submitted no new evidence with her Application for Review Consideration which would indicate this finding was inaccurate.

In her decision the Arbitrator noted that the Tenant did not give proper notice of her intent to end the tenancy, which is the why she determined the Tenant remained obligated to pay rent. There is nothing in the decision that clearly indicates the Tenant testified that she ever provided the Landlord with written notice of her intent to vacate the rental unit. Although it is not specifically stated in the decision, I find it is possible that the letter the Landlord received on February 12, 2013, informed the Landlord that the Tenant wished to end the tenancy. The Tenant submitted no new evidence with her Application for Review Consideration which would indicate that she did provide proper written notice to end the tenancy.

As the Tenant has submitted no new evidence to show that she properly informed the Landlord that this tenancy was ending, I find that the Tenant has failed to establish grounds for review pursuant to section 81(2)(b) of the *Act*.

Decision

Section 81 of the *Act* reads:

- (1) At any time after an application for review of a decision or order of the director is made, the director may dismiss or refuse to consider the application for one or more of the following reasons:
 - (a) the issue raised by the application can be dealt with by a correction, clarification or otherwise under section 78 [*correction or clarification of decisions or orders*];
 - (b) the application
 - (i) does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely,
 - (ii) does not disclose sufficient evidence of a ground for the review,
 - (iii) 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, or
 - (iv) is frivolous or an abuse of process;
 - (c) the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.
- (2) A decision under subsection (1) may be based solely on the written submissions of the applicant.

I dismiss the Tenant's application for review, pursuant to section 81(1)(b)(ii) of the *Act*, as she has failed to disclose sufficient evidence of a ground for review.

The Arbitrator's decision and Order, dated June 25, 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: July 23, 2013

Residential Tenancy Branch