



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: FF MNR OPB OPR

Introduction

The Decision/Order under review is a decision on the Landlord's application for an Order of Possession and a Monetary Order for unpaid rent. The Arbitrator granted the Landlord an Order of Possession effective 2 days after service on the Order upon the Tenant.

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 Tenant applies for review on the second and third ground set out above.

Issues

Should the Decision and Order dated August 7, 2013, be suspended and a new Hearing ordered?

Facts and Analysis

Under "New and Relevant Evidence", the Tenant provided copies of two receipts for money orders totaling \$1,600.00, dated June 11, 2013. The tenant submits:

"10 day Notice was received June 6. Rent was paid on June 11th. As per section 12.5: The Notice becomes void and tenancy continues if the tenant pays the rent owing within five days of receiving the notice."

Under "Fraud", the Tenant submits:

"Landlord NEVER gave 10 day Notice for July. Landlord indicated on the [application for dispute resolution] that tenants had not paid the rent. Notice given on June 6 and paid June 11th. *He obtained the hearing on July 4 and knew rent was paid. The Landlord knew the rent was paid in full and still applied..... on July 4th. Landlord also states more than 3 ppl in home. Our agreement clearly shows 4 ppl. The arbitrator was under the impression that the rent was still outstanding."

In his August 7th Decision, the Arbitrator accepted the Tenant's submission that outstanding rent had been paid, but **also found that the Tenant had been served with a Notice to End Tenancy for Unpaid Rent on July 2, 2013, by registered mail.** He further found that the Tenant did not pay the outstanding July rent within the five days allowed under the Act and was also late paying rent for August. The Arbitrator accepted the Landlord's submission, supported by copies of receipts, that the Landlord accepted the rent payments for July and August for "use and occupancy only". He found that the tenancy had not been reinstated and that the Notice to End Tenancy served July 2, 2013, is a valid notice to end the tenancy.

I dismiss the Tenant's Application for Review on the grounds of new and relevant evidence, because the evidence provided by the Tenant was available at the time of the original arbitration hearing and is neither new nor relevant to the facts upon which the Arbitrator based his findings.

I dismiss the Tenant's Application for Review on the grounds of fraud, because the Tenant's Application 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. The Arbitrator issued the Order of Possession based on the Notice to End Tenancy that was issued on July 2, 2013, not on the Notice to end Tenancy that was received by the Tenant on June 6, 2013.

Conclusion

The Tenant's Application for Review Consideration is dismissed.

The original Decision and Orders dated August 7, 2013, are confirmed.

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: August 17, 2013

Residential Tenancy Branch