



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: CNC MNDC OLC

Introduction

On July 18, 2013 Arbitrator XXXXXX provided a decision on the tenant's Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause, a monetary order and an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement. The hearing had been conducted on July 17, 2013.

That decision recorded the tenant's wish to amend his Application to deal only with the 1 Month Notice to End Tenancy for Cause and granted the Notice was effective and granted the landlord an order of possession. The tenant did not request an extension of time to apply for Review Consideration.

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 submits in his Application for Review Consideration that he has new and relevant evidence that was not available at the time of the original hearing; and he has evidence that the director's decision was obtained by fraud.

Issues

It must first be determined if the tenant has submitted his Application for Review Consideration within the legislated time frames required for reviews.

If the tenant has submitted his Application within the required time frames it must be decided whether he is entitled to have the decision and order of July 18, 2013 suspended with a new hearing granted because he has provided sufficient evidence to establish that he has new and relevant evidence that was not available at the time of the original hearing or the landlord obtained the decision and order based on fraud.

Facts and Analysis

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 5 days after a copy of the decision or order is received by the party, if the decision relates to a landlord's notice to end tenancy for any reason other than non-payment of rent.

From the decision of July 18, 2013 the issues before the Arbitrator were related to a landlord's notice to end tenancy for cause. As such, I find the decision and order the tenant is requesting a review on allowed 5 days to file his Application for Review Consideration.

From the tenant's submission he received the July 18, 2013 decision on July 24, 2013 and filed his Application for Review Consideration with the Residential Tenancy Branch on July 26, 2013 (2 days after receipt of the decision). I find the tenant has filed his Application for Review Consideration within the required timelines.

I note however, the tenant also submitted additional documentation in regard to his Application for Review Consideration on July 30, 2013. Section 79(3) states that an application for review of a decision or order must be, among other things, accompanied by full particulars of the grounds for review and the evidence on which the applicant intends to rely.

As such, all of the tenant's submissions must have been provided when he filed his Application for Review Consideration. As a result, I have not considered the additional documentary submission made by the tenant on July 30, 2013.

In response to the requirement on the Application for Review Consideration to list each item of new and relevant evidence and state why it was not available at the time of the hearing and how it is relevant the tenant submits (reproduced as written):

"BCH only gave me 1 warning since 2009 That's four years. And all incidents were not even remotely close to what was captured by the writers exhuberence!! BCH has set me up for a supposed life long low income rent from being homeless and sickness is why this place was."

While throughout the additional 16 pages of handwritten submissions the tenant disputes the events that may have lead to the issuance of the 1 Month Notice to End Tenancy for Cause, he has provided no additional evidence to support his submissions. As such, I find the tenant is merely attempting to reargue his position. A Review Consideration is not such an opportunity.

While the tenant submits that he has several witnesses that could attest to his position and that he has provided their phone numbers. I note that he submitted the phone numbers of several individuals to the original hearing file.

As such, if the tenant or his advocate who attended the hearing had wanted any of these witnesses to provide verbal testimony they should have identified to the Arbitrator that they wanted to call their witnesses into the hearing. As there is no indication in the July 18, 2013 decision that the tenant or his advocate requested calling any witnesses in to the hearing, I find it was the tenant who failed to produce his witnesses at the original hearing.

I therefore I find that the tenant cannot rely on his failure to call in witnesses during the hearing as a ground for new and relevant evidence after the close of the hearing.

From the tenant's Application for Review Consideration the tenant did not specifically identify that he was seeking a Review Consideration based on fraud but he did provide the following responses (reproduced as written) to two of the three questions regarding fraud on the Application:

1. Which information submitted for the initial hearing was false and what information would have been true?
 "All the evidence containing incident reports were never made aware to me And it's absolute hogwash. I submitted a letter from a committee member with his telephone #."
2. How did the person who submitted the information know it was false?
 "I am but a mere mortal but I'm sure that it was an error in offices of BCH Regarding punches and a whole other incident. 2 incidents mistakenly logged in. Defaming my character as being hostile and threatening!"

The tenant did not provide any written response to the question "How do you think the false information was used to get the desired outcome?"

Decision

For the reasons noted above, I dismiss the tenant's Application for Review Consideration.

The decision made on July 18, 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: August 01, 2013

Residential Tenancy Branch