



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: MNR OPR

Introduction

On July 29, 2013 XXXXXXXX provided a decision on the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order for unpaid rent. The matter was adjudicated through the Direct Request process on July 29, 2013 and no participatory hearing was convened.

That decision granted the landlord an order of possession effective 2 days after service and a monetary order in the amount of \$840.00. The tenant did not request an extension of time to apply for Review Consideration.

Division 2, Section 79(2) under the *Residential Tenancy Act (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.

However, in the case of decisions granted through the Direct Request process there is no participatory hearing convened and as such the ground of not being able to attend a hearing is not applicable.

The tenant submits in his Application for Review Consideration that he was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond his control; 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 orders of July 29, 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 he has evidence the tenant obtained the decision 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 2 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 non-payment of rent.

From the decision of July 29, 2013 the issues before the Arbitrator were related to the landlord's notice to end the tenancy for non-payment of rent. As such, I find the order the tenant is requesting a review on allowed 2 days to file his Application for Review Consideration.

From the tenant's submission he received the July 29, 2013 order on August 2, 2013 and filed his Application for Review Consideration with the Residential Tenancy Branch on August 6, 2013 (1 business day after receipt of the order). I find the tenant has filed his Application for Review Consideration within the required timelines.

The tenant submits that he did not receive the 10 Day Notice to End Tenancy for Unpaid Rent but rather his roommate did receive it and failed to inform this tenant of the Notice. As the two tenants were both named in the tenancy agreement they are considered co-tenants. Residential Tenancy Policy Guideline #13 stipulates that co-tenants are jointly and severally responsible for their obligations under the tenancy agreement.

Pursuant to Section 88 of the *Act* a landlord must serve documents such as a 10 Day Notice to End Tenancy for Unpaid Rent by one of the following methods:

1. By leaving a copy with the tenant;
2. By sending a copy by ordinary or registered mail to the address at which the tenant resides;
3. By sending a copy by ordinary or registered mail to an address provided by the tenant as a forwarding address;
4. By leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
5. By leaving a copy in a mail box or mail slot for the address where the tenant resides;
6. By attaching a copy to a door or other conspicuous place at the address where the tenant resides;
7. By transmitting a copy by fax to a number provided by the tenant as an address for service; or
8. As ordered by an arbitrator from the Residential Tenancy Branch.

As such, and since the tenant does not dispute the landlord served his roommate with the 10 Day Notice to End Tenancy for Unpaid Rent I find the fact the tenant was not informed by his roommate is a matter between him and his roommate and is not grounds to grant a new hearing.

The tenant also submits that he did not receive the Notice of Direct Request proceedings by registered mail until July 23, 2013. The evidence in the original file indicates the landlord served the tenant with these documents by registered mail on July 18, 2013 and as such I find the tenant was provided with notification of the proceeding as is required. The tenant does not state that he attempted to provide evidence to the Direct Request process when he was informed of the proceeding.

The tenant submits that he had discussed the issue with the landlord after he received the Notice of Direct Request proceedings that he had no idea his roommate had not paid rent and that the roommate had now moved out of the unit without telling the tenant. The tenant submits the landlord agreed to provide him with a cheaper rental unit and that he could pay off the amount owing over time.

While the tenant submits that he has a Ministry of Human Resources "Intent to Rent" form for a lower rent suite offered by the landlord as additional evidence the tenant did not provide a copy of any documents in support of his position.

When stating a position or that you have evidence of something in an Application for Review Consideration it is incumbent on the party to submit any evidence they have to

support that position. In the case before me the tenant did not provide any evidence of an agreement with the landlord to pay the rental arrears over time and to move to a cheaper rental unit.

In addition the tenant's submission confirms, in fact, that there is rent owing on the rental unit under the tenancy agreement between the landlord and both the tenants named in this action. As such, I find that even if I were to grant a new hearing the tenant has provided no evidence to show that the outcome would change, pursuant to Section 81(1) (b).

Decision

For the reasons noted above, I dismiss this Application for Review Consideration.

The order made on July 29, 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 09, 2013

Residential Tenancy Branch