



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR MNSD OPR

Introduction

On August 6, 2013 Arbitrator XXXXX provided a decision on the landlord's Application for Dispute Resolution seeking an order of possession for unpaid rent and a monetary order. The hearing had been conducted on August 6, 2013.

That decision granted an order of possession and a monetary order in the amount of \$150.00. The tenant did not request an extension of time to apply for Review Consideration.

Division 2, Section 79(2) under the *Residential Tenancy Act* 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 her Application for Review Consideration that she was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond her control; that she has new and relevant evidence that was not available at the time of the original hearing; and she has evidence that the director's decision was obtained by fraud.

Issues

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

If the tenant has submitted her Application within the required time frames it must be decided whether she is entitled to have the decision and orders of August 6, 2013 suspended with a new hearing granted because she has provided sufficient evidence to establish that she was unable to attend the hearing for unexpected reasons that were beyond her control; she has new and relevant evidence that was not available at the time of the original hearing; or she 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 the tenancy due to the non-payment of rent.

From the decision of August 6, 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 decision and order the tenant is requesting a review allowed 2 days to file her Application for Review Consideration.

From the tenant's submission she received the August 6, 2013 decision on August 9, 2013 and filed her Application for Review Consideration with the Residential Tenancy Branch on August 12, 2013 (1 business day after receipt of the decision). I find the tenant has filed their Application for Review Consideration within the required timelines.

The tenant submits that she was unable to attend the hearing of August 6, 2013 for two reasons:

1. That her boss had a boiler room blow up; his leg was crushed; and he is in serious condition in hospital. The tenant does not explain when this occurred or why it impacted her ability to attend the hearing. She also has provided no documentary evidence to support this claim; and
2. That she was not served. I assume that she means that she was not served with notice of the hearing. However, the decision clearly notes that the tenant was served with notice of the hearing by registered mail and that according to Canada Post's website the tenant had been provided notice from Canada Post that she had registered mail but she did not retrieve it.

As the tenant has provided no explanation as to why her employer's injury caused her to not be able to attend the hearing and because she has not provided any evidence that she was involved in the incident I find she has failed to establish that this was a reason she could not attend the hearing.

Further, as the Arbitrator considered the record from Canada Post that the tenant refused to claim her registered mail, I find the tenant deliberately was attempting to avoid service. As such, I find the tenant cannot rely upon that deliberate avoidance to state it was beyond her control that she did not receive the notice of hearing.

The tenant submits that she has new and relevant evidence related to her power being disconnected on August 8, 2013 and that at the time she submitted her Application for Review Consideration on August 12, 2013 she still did not have power. The tenant states that she also has bedbugs and that she wants compensation.

Despite these submissions as the issue before the Arbitrator were related to the non-payment of rent and a Notice to End Tenancy for Unpaid Rent issued by the landlord on June 5, 2013, I find the tenant has provided new evidence, however, I find that it has no relevance to the payment of rent prior to June 5, 2013. Therefore, I find the tenant has failed to establish that she has new and relevant evidence.

Despite the tenant's claims that she did not receive the notice to end tenancy she does submit in her Application for Review Consideration that when she was going to "put another 300 down for rent" she was told by the building manager that "she was going to arbitration".

Clearly the tenant was aware that she had not paid rent in full for the month of June 2013 and that the landlord intended to proceed to arbitration because the tenant had failed to pay the rent when it was due. In the absence of any additional evidence to corroborate her assertions, I find the tenant has provided no evidence that the landlord committed fraud to obtain the decision and order.

Decision

For the reasons noted above, I find the tenant has failed to establish sufficient grounds for a new hearing on these matters.

The decision made on August 6, 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 19, 2013

Residential Tenancy Branch