



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNSD

Introduction

On August 12, 2013 Arbitrator XXXXXX provided a decision on cross Applications for Dispute Resolution. The landlord sought a monetary order for lost revenue and the tenants sought return of double the security deposit less the amount already received. The hearing had been conducted on August 12, 2013.

That decision granted the tenants a monetary award of \$975.00 and the landlord a monetary award of \$900.00. The arbitrator issued a monetary order to the tenants for the difference between the two awards or \$75.00. The tenants 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 tenants submit in their Application for Review Consideration that they have new and relevant evidence that was not available at the time of the original hearing; and they have evidence that the director's decision was obtained by fraud.

Issues

It must first be determined if the tenants have submitted their Application for Review Consideration within the legislated time frames required for reviews.

If the tenants have submitted their Application within the required time frames it must be decided whether the tenants are entitled to have the decision and order of August 12, 2013 suspended with a new hearing granted because they have provided sufficient evidence to establish that they have new and relevant evidence that was not available at the time of the original hearing; or they have 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 15 days after a copy of the decision or order is received by the party, if the decision does not relate to a matter of possession of the rental unit; a notice to end tenancy; withholding consent to sublet; repairs or maintenance or services and facilities.

From the decision of August 12, 2013 the issues before the Arbitrator were related to the landlord's claim for lost revenue and the tenants' claim for return of double the security deposit. As such, I find the decision and order the tenants are requesting a review on allowed 15 days to file their Application for Review Consideration.

From the tenants' submission they received the August 12, 2013 decision and order on August 12, 2013 and filed their Application for Review Consideration with the Residential Tenancy Branch on August 23, 2013 (11 days after receipt of the decision and order). I find the tenants have filed their Application for Review Consideration within the required timelines.

The tenants submit that the new and relevant evidence included a copy of a signed inspection report dated May 1, 2013; copy of a notice to end tenancy signed and dated May 1, 2013 by the landlord and that it was altered; copy of a cheque received by the tenants in June 2013 confirming the landlord had the tenants' forwarding address. The tenants submit they thought they had submitted this information but found out that she had not too late to serve it to the landlord and the Residential Tenancy Branch.

While the evidence may be relevant the fact that a party "forgets" to serve evidence does not provide rationale that this is new evidence as it is clear that the tenant, in this case, had the evidence prior to the hearing. A new hearing cannot be granted for evidence that existed and was in the tenant's possession but was not provided to the other party prior to the original hearing.

The tenants submit also that the order and decision were obtained based on fraud. The tenants submit that:

"Copy of check for pet deposit return of \$125.00 proves landlord had our forwarding address 'before' I applied to the Tenancy Branch for Dispute Resolution.

Copy of Notice to End Tenancy signed by MB & SH was altered by landlord (date at top in landlord's writing) 'May 1st 2013 at 3:20 p.m.'

Landlord forged our move in signatures on Inspection Report & was not present for the move in or move out.

Landlord 'covered up' and photo copied the End of Tenancy sheet at the top in his writing so it wouldn't show up on the paper.

Landlord did not submit page 3 of Inspection Report proving the landlord had our 'Forwarding Address' from this date May 1st, 2013."

The tenants also submitted a written statement explaining that they had done everything the landlord had asked for in terms of repairs and cleaning. In the statement the state: "We did all the repairs and would like to have our 400.00 balance returned to us."

I note that the decision dated August 12, 2013 addressed all of the issues identified by the tenants. The Arbitrator found that the landlord had the tenant's forwarding address by May 31, 2013 and that the landlord failed to return the deposit within 14 days. The Arbitrator granted the tenants \$975.00 for double the deposit and the filing fee. This amount is far greater than the \$400.00 the tenants seem to want back in their Application for Review Consideration.

As a result, I find that the evidence submitted by the tenants for their Review Consideration provides no evidence of fraud. In fact some of the evidence is not even relevant to either the tenant's Application for Dispute Resolution or the landlord's, such as the receipts from Home Depot. There were no issues identified in the original Applications or in the decision that related to repairs to the unit.

While the decision granted the tenants return of double their deposit less the amount they had already received, the decision also granted the landlord was entitled to compensation for lost rent for the month of May 2013 because the tenants failed to give their notice to end the tenancy until April 6, 2013. If the tenants find the decision unclear as to the reasons the landlord was granted this compensation they should seek a clarification from the original arbitrator.

Section 81 of the *Act* stipulates that the director may dismiss an Application for Review Consideration if the application:

1. Does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
2. Does not disclose sufficient evidence of a ground for the review;
3. 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
4. Is frivolous or an abuse of process.

I find that all of the additional evidence provided and the evidence submitted by the tenants to support their claim of fraud does not include any information that would affect the outcome of the decision of August 12, 2013. As such, pursuant to Section 81, I find this Application for Review Consideration discloses no basis on which the decision or orders should be set aside or varied.

Decision

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

The decision made on August 12, 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 28, 2013

Residential Tenancy Branch