



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: FF MNDC MNSD O

Introduction

The original dispute resolution hearing on the application of the tenant was held on August 9, 2013, and a Decision was issued on August 30, 2013, dismissing the tenant's application for monetary compensation for an alleged loss of quiet enjoyment and for a return of her security deposit.

This is a request by the tenant for a review consideration of that original Decision.

The tenant applied for a review consideration on the grounds that she has new and relevant evidence that was not available at the time of the original hearing and that she has evidence that the Decision was obtained by fraud, pursuant to Section 79(2) under the *Residential Tenancy Act*

Additionally, the tenant filed for an extension of time to make the application for review consideration.

Issues

Has the applicant for review provided sufficient evidence to support the indicated grounds for review?

Has the tenant established an entitlement for an extension of time to make the application for review consideration?

Facts and Background

The tenant in her application for review consideration claimed that the original Decision of August 30, 2013, of another Arbitrator was based upon fraud of the landlord, a subsidized housing corporation, and as proof, submitted copies of the minutes of some meetings found on the landlord's website. These minutes pertained to the construction project taking place on the residential property where the rental unit was located, the

project for which the tenant sought monetary compensation for an alleged loss of quiet enjoyment.

The other Arbitrator found that the tenant suffered a loss of her quiet enjoyment, but failed to take reasonable steps to minimize her loss as required under section 7 of the Residential Tenancy Act. Due to this finding the Arbitrator dismissed the tenant's claim for monetary compensation.

Additionally the other Arbitrator found that the tenant had agreed to the move-out charges on the final condition inspection report, and that the landlord properly retained that portion of the security deposit as agreed to by the tenant. As a result, the Arbitrator dismissed the tenant's claim for a return of her security deposit.

An extension of time to file the application for review consideration-

The tenant claimed that printer and memory stick issues prevented her from filing her application for review consideration within the 15 days allowed under the Act.

New and relevant evidence that was not available at the time of the hearing-

In support of her application for review consideration, the tenant submitted a copy of the original Decision, dated August 30, 2013, with handwritten notations indicating that she disagreed with some of the findings of the original Arbitrator and why, a handwritten document stating why she disagreed with the Decision, which was an incomplete statement, and copies of the minutes of the landlord, as mentioned above.

The tenant contended that the minutes show that contrary to the landlord's agent's testimony taken at the original hearing on August 9, 2013, there were complaints made by other tenants in the residential property of about the construction project.

Additionally the tenant submitted this evidence was not available at the time of the hearing as she was unaware she would need to respond to the landlord's "unsolicited" statements at the hearing.

I must note that the evidence supplied by the tenant, that of the minutes, does not mention that complaints were received by the landlord, but rather "some issues had been raised."

Evidence the Decision was obtained by fraud-

In reference to the evidence referenced above submitted by the applicant/tenant, she claimed that the statement by the landlord's agent that they had not received complaints by other tenants reflected on her credibility. The tenant also objected to the Arbitrator allowing the landlord's agent's testimony, as this was not considered "evidence."

Analysis on Review

An extension of time to file the application for review consideration-

Under section 66(1) of the Act, an extension of time can only be granted where the applicant has established that there are exceptional circumstances. I find that the tenant has failed to prove that exceptional circumstances prevented her from filing for review consideration within the prescribed time limit as printer and memory stick issues are not considered exceptional and could have been anticipated. I therefore dismiss the tenant's application for review consideration.

Even had I not dismissed the tenant's application for not being timely filed, I would still make the decision to dismiss her application for the following reasons.

New and relevant evidence that was not available at the time of the hearing-

Under Residential Tenancy Branch Policy Guidelines, new evidence includes evidence that has come into existence since the dispute resolution hearing or evidence which the applicant could not have discovered with due diligence before the hearing. Further the applicant/tenant is required to explain why the evidence was not available.

It is my decision that the tenant has not provided new and relevant evidence to support her application, as the other Arbitrator's Decision was based upon the failure of the tenant to prove that she met her requirement to take reasonable measures to minimize her loss, not the evidence of the landlord.

While the evidence supplied by the tenant may have been new, it was not relevant to the Decision made by the other Arbitrator.

Evidence the Decision was obtained by fraud-

I find the arguments of the tenant in her application for review consideration were the arguments the tenant made at the hearing and consisted of re-arguments that the tenant presented during the hearing. It is evident that the tenant has taken issue with

the outcome of the hearing; however the fact that the applicants/tenant disagrees with the conclusion reached by the Arbitrator does not amount to fraud.

Therefore I find that the tenant has not presented evidence to support her application for review consideration.

Decision

Due to the above, I dismiss the tenant's application for review consideration and confirm the original Decision dismissing the tenant's application for dispute resolution, dated August 30, 2013.

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: September 25, 2013