



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNSD

Introduction

This application was filed by the tenants, requesting a review consideration of the Decision made on August 28, 2013.

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 have applied based on ground 1, 2 and 3 for review consideration.

Issues

1. Were the tenants unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control?
2. Do the tenants have new and relevant evidence that was not available at the time of the original hearing?
3. Do the tenants have evidence the director's decision or order was obtained by fraud?

Facts and Analysis

Unable to attend the original hearing:

The tenants write in their application that they were unable to attend the hearing because "Unfortunately I had made a huge error months ago recording the time of the hearing and therefore my entire case for the deposit and double the deposit as encouraged by the RTB to file for was unheard" [Reproduced as written]

A dispute resolution hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. This ground is

not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.

While the tenants claimed to have made an error months ago, I find that not consistent with the evidence they submitted for the original hearing because on August 19, 2013, the tenants faxed in their evidence. On their covering letter they had written both the time and date of the hearing and this was sent eight days before the scheduled hearing. As a result, I question the credibility of the tenant's submission on their application for review consideration.

Therefore, I find the tenants have failed to establish the grounds that they were unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control, such as a medical emergency.

New and relevant evidence:

The tenants submit in their application that they have new and relevant evidence

File as evidence is:

- an invoice dated December 21, 2012
- an email sent between the two tenants dated September 19, 2013, re: back lawn requires action. The email appears to be between the landlord and tenant in 2005.

The Residential Tenancy Policy Guideline #24 defines new evidence as evidence that has come into existence since the dispute resolution hearing. It also includes evidence which the applicant could not have discovered with due diligence before the dispute resolution hearing.

Evidence in existence at the time of the original hearing which was not presented by the party will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through taking reasonable steps, have become aware of the evidence.

In this case, the tenants submit an invoice dated December 21, 2012. However, this invoice was submitted as evidence for the original hearing. Therefore, I find the tenants have failed to establish the invoice dated December 21, 2012, is new evidence.

The tenants have further submitted an email. The original email relates to a lawn issue in 2005. I find this email was in existence at that the time of the original hearing and with due diligence could have been submitted at the original hearing. Also, I find that the issue of the lawn was not an issue at the original hearing. Therefore, I find the tenants have failed to establish the email is new evidence or relevant.

Therefore, I find the tenants have failed to establish the grounds that they have new and relevant evidence.

Fraud

The tenants write in their application that the landlord submitted evidence past the hearing deadline and it appears to have been considered. However, under the Residential Tenancy Branch Rules of Procedure the arbitrator can accept evidence that was provided if the evidence is relevant. This does not constitute fraud.

The tenants further writes because of their unfortunate mistake of recording the wrong time for the hearing they were not afforded the opportunity to respond. However, the tenant has not provided evidence that the decision was obtained by fraud. The arbitrator heard the evidence on these issues in the hearing and made a decision based on the evidence presented. This is not an opportunity for the tenants to reargue the case. Therefore, I find the tenants have failed to prove the decision or order was based on fraud.

Decision

Based on the above, the application and on a balance of probabilities, I find the tenant application for review consideration must be dismissed.

Therefore, I find the Decision and orders made on August 28, 2013, stand and remain in full force and effect. The tenants' application for review is dismissed.

This decision is final and binding on the parties, except as otherwise provided by the Act and 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 30, 2013

Residential Tenancy Branch