



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78, as amended.

On September 4, 2013, the Residential Tenancy Branch received an Application for Review from XXXXXXXX, Landlord(s),.

Subject:

File Number: XXXXXXXX,
Decision dated: July 29, 2013
Rental Unit: XXXXXXXX,
XXXXXXXXXX, BC

Other Party: XXXXXXXX, Tenant(s),

Introduction

On July 29, 2013 Arbitrator XXXXXXXX provided a decision on the landlord's Application for Dispute Resolution seeking to a monetary order. The hearing had been conducted on July 29, 2013.

That decision dismissed the landlord's Application and issued an order to have the landlord return the balance of the tenant's security deposit. The landlord 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 landlord submits in her Application for Review Consideration that she has new and relevant evidence that was not available at the time of the original hearing.

Issues

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

If the landlord has submitted her Application within the required time frames it must be decided whether the landlord is entitled to have the decision and order of July 29, 2013 suspended with a new hearing granted because she has provided sufficient evidence to establish that she has new and relevant evidence that was not available at the time of the original hearing.

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 July 29, 2013 the issues before the Arbitrator were related to the landlord's claim for damage to the property after the end of the tenancy. As such, I find the decision and order the landlord is requesting a review on allowed 15 days to file their Application for Review Consideration.

From the landlord's submission she received the July 29, 2013 decision on August 22, 2013 and the order on August 31, 2013 and filed her Application for Review Consideration with the Residential Tenancy Branch on September 4, 2013 (4 days after receipt of the decision and order). I find the landlord has filed her Application for Review Consideration within the required timelines.

In response to the question on the Application for Review Consideration asking the applicant to "List EACH item of new and relevant evidence and state WHY it was not available at the time of the hearing and HOW it is relevant" the landlord provided the following response:

"Document A – Assumption have been made by the arbitrator that are not based on fact and evidence.

- 23(1) Tenant and landlord conducted move in inspection together July 26th, 2012
- 23(5) Tenant and landlord both signed off on move in report and & 18(1) tenant was given the second copy of the inspection, July 26th, 2012
- I fail to see in any of the evidence that the tenant did not receive a copy of the report, we both have a copy

- 20(1) The tenant filled out the report herself, it was a brand new suite and she signed off that the condition was as she filled out the form, I signed off as well that I was agreeable to her views & assessment of the suite.

The landlord did not list any new evidence; she did not provide any information as to why the information that she listed in the response was new or why it was not available at the original hearing; or how it may have been relevant.

The landlord included an additional page of written submissions in which she outlines how she disagrees with the original arbitrator's decision and requests that the original arbitrator look at all the evidence that had been submitted. She makes references to the documents submitted to the original hearing.

The landlord has included in her Application for Review Consideration a copy of a letter written by the tenant to the landlord dated either August 20, 2013 or August 31, 2013 that indicates that the tenant has enclosed a copy of the order provided by the Arbitrator on July 29, 2013 and demanding payment in compliance with the order.

The landlord has given no information as to how this is new evidence; how it is relevant to her claim or how it would have made a difference to the decision and order had it been provided to the original hearing. In addition, I note that the letter is written after the hearing and is related to the outcome of the hearing.

The landlord has also provided into evidence a copy of a "Lease Agreement" dated and signed by both parties on June 8, 2012. While I can see that the lease agreement is relevant to establish that a tenancy had occurred, I find that the landlord has failed to provide any information as to why it is relevant to the outcome of the proceedings; how it is new evidence, since the date is prior to the tenancy; or how it would impact the outcome of the hearing.

From the written submissions and documentary evidence provided by the landlord I find the landlord has failed to provide any evidence that could be considered new or relevant. Further I find that the landlord is only attempting to re-argue her position and her evidence. A Review Consideration is not such an opportunity, but rather an opportunity for the appellant to request a *new hearing* because:

- They were not able to attend for reasons beyond their control;
- To allow the appellant to introduce new and relevant evidence that did not exist prior to the original hearing; or
- Because the original decision was obtained by fraud.

For the above noted reasons, I find the landlord has failed to establish any grounds sufficient to grant a new hearing.

Decision

Based on the above, I dismiss the landlord's Application for Review Consideration.

The decision 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: September 09, 2013

Residential Tenancy Branch