



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 16, 2013, the Residential Tenancy Branch received an Application for Review from XXXXXXXX, Tenant(s),.

Subject:

File Number: XXXXXX,
Decision dated: May 11, 2012
Rental Unit: XXXXXXXXXX
XXXXXX, BC

Other Party: XXXXXXXXX, Landlord(s),

Introduction

On May 11, 2012 Arbitrator XXXXXX provided a decision on the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order for unpaid rent. The hearing had been conducted by way of Direct Request on May 11, 2012 and a participatory hearing was not convened.

That decision granted the landlord an order of possession and dismissed the landlord's monetary claim with leave to reapply. The tenant requested an extension of time to apply for Review Consideration stating "please review. Mancells – lease".

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 his Application for Review Consideration that he was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond his control; that he has new and relevant evidence that was not available

at the time of the original hearing; and he has evidence that the director's decision was obtained by fraud.

Issues

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

If the tenant has submitted his Application within the required time frames it must be decided whether the tenant is entitled to have the decision and order of May 11, 2012 suspended with a new hearing granted because he has provided sufficient evidence to establish that he was unable to attend the hearing for unexpected reasons that were beyond his control; he has new and relevant evidence that was not available at the time of the original hearing; or he 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 an early end of tenancy; an order of possession for a landlord or tenant; unreasonable withholding of consent by a landlord regarding assignment and subletting or a landlord's notice to end a tenancy for non-payment of rent..

From the decision of May 11, 2013 the issues before the Arbitrator were related to the landlord's notice to end tenancy for non-payment of rent. As such, I find the decision and order the tenant is a review on allowed 2 days to file their Application for Review Consideration, after received of the decision or order.

From the tenant's submission he has never received the May 11, 2012 decision and order. As such, I find the tenant's Application to be premature and as such, I decline to adjudicate the Review Consideration Application.

I note that the tenant had filed a similar Application for Review Consideration on July 25, 2013 and was given similar decision. I also note that in that decision the Arbitrator mentioned that if the tenant now lived at a different address than the dispute address the order against him would not be enforceable against the tenant.

From the tenant's most recent Application for Review Consideration I note that the tenant's current address is different than the dispute address named in the decision and order. As such, I find there would be no need to have a new hearing granted on these matters, even if the tenant had received the decision and order.

Decision

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

The decision made on May 11, 2012 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 23, 2013

Residential Tenancy Branch