



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR MNSD

Introduction

The Tenant applied for a review of Arbitrator's decision of September 9, 2013. In that decision the Landlord had applied for monetary compensation for unpaid rent, loss or damage under the Act, regulations or tenancy agreement and to retain the Tenants' security deposit. The Landlord was awarded a monetary order for \$5,168.00. The award was based on unpaid rent of \$4,200.00, loss rental income of \$1,400.00 and \$168.00 for pest control costs to the Landlord. As well the decision ordered the Landlord to retain the Tenants' security deposit of \$700.00 and to recover the filing fee of \$100.00 from the Tenants.

The award to the Landlord was based on the Tenants ending the tenancy prior to the end of the fixed term tenancy which was May 31, 2013. The Tenants moved out of the rental unit in mid February, 2013 and had unpaid rent for January and February, 2013. As well the Arbitrator indicated in the decision that the Tenants gave their notice to end the tenancy to the Landlord when they were aware the Landlord was out of the country for 3 months.

The Tenants applied for a review consideration of Arbitrator's, September 9, 2013 decision and Order on October 16, 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.

Issues

The Tenants' application for a review of the previous Arbitrator's decision is on the grounds that the Tenants were unable to attend the original hearing because of circumstances beyond their control, the Tenants have new and relevant evidence that was not available at the time of the hearing and the Tenants have evidence the decision and order were obtained by fraud. Is the Tenant's application justified?

Facts and Analysis

The Tenants said in their review consideration application that they were unable to get a constant phone signal for their phone for the conference call of September 9, 2013, so their phone cut out for parts of the hearing. Further the Tenant indicated that she was late for work and was very upset. As a result the Tenants say they were not able to attend the full hearing for reasons beyond their control.

It is the responsibility of any participant in a hearing proceeding to insure they are prepared for the hearing. Insuring and establishing a secure connection for a conference call hearing is a basic requirement. By the Tenant choosing to phone into the conference call on an unsecure or problematic phone line is not a reason to justify a review hearing. The Tenant could have found a secure land line or cell phone service area that could provide dependable service. Secure land telephone lines are available to the public at all Service BC locals. Consequently I do not accept that having a poor cell phone connection is a reason that is beyond the Tenant's control to attend the hearing. The Tenant could have anticipated the potential problems with the cell phone connection. Therefore I dismiss the Tenants' request for a review Hearing based on missing parts of the conference because of poor cell service as this issue was not beyond the Tenants control.

The Tenants also applied for a review based on new and relevant evidence. The Tenants submitted witness letters, cell phone records, bank statements and photographs to support the claims they made in the Hearing on September 9, 2013. For an application to be successful under the provision of new and relevant evidence the evidence must be evidence that was not available at the time of the hearing. If the evidence was available and just not presented at the Hearing, the evidence does not meet the definition of new and relevant evidence. If this is the case then the Applicant is just re-arguing the issues with evidence that was available but not submitted. I find the evidence presented in the Tenants' review consideration application was available prior to the Hearing of September 9, 2013. Consequently the Tenants could have presented this evidence at the Hearing; therefore the evidence submitted in the review consideration application is not new or relevant evidence that was not available at the

time of the original hearing. I find the Tenants are re-arguing the issues in the original hearing with evidence that was available to them for that hearing, but the evidence was not presented. As a result I dismiss the Tenants' review consideration application on the grounds of new and relevant evidence.

The Tenants review consideration application is also made on the basis that the Tenants believe the decision and order were obtained by fraud. The Tenants say in their application that the Landlord said they did not rent the unit out prior to July, 2013. The Tenants submitted a letter from a neighbour who indicates the Landlord did rent the unit out to two females and their boyfriends and another set of people right after the Tenants moved out. It should be noted the letter is not **notarized** and the authors of this letter are not identified as their signatures are not legible. In total the Tenants sent in 4 letters, none of the letters are **notarized**, only one is signed and the signatures are legible. Consequently I do not accept the letters as evidence that the Landlord obtained the decision and order by fraud.

Further the Tenants indicates in their review consideration application that phone records shows calls to the Landlord during the tenancy so the Landlord's claim that he does not speak English is not true. The phone records do prove calls were made to the Landlord's phone, but it does not prove who was speaking on the phone. As well speaking in a Hearing is quite a different matter than day to day conversations and it may be the Landlord did not think his English was good enough for a Hearing proceeding. The Landlord having an agent to speak for him is not fraudulent.

The Tenant also submitted a bank statement which shows a transaction on January 2, 2013 for \$700.00. The Tenant says this transaction was a partial rent payment to the Landlord. On reviewing the bank statement there is no identification on the account showing whose account it is and if the account the funds were transferred to is the Landlord's account. Consequently the bank statement evidence does not prove a partial rent payment of \$700.00 was paid to the Landlord. As a result I do not accept the bank statement as proof that the Tenants' made a partial rent payment in January, 2013 of \$700.00 and that the Landlord was fraudulent about the January, 2013 rent being unpaid.

For the above reasons I do not accept the Tenants' claims that the Landlord obtained the decision and Order of September 9, 2013 by fraud.

Decision

In considering the evidence of the Tenants' review application, I find that the Tenants have not established grounds to be granted a review hearing. Consequently I dismiss the Tenants' application for a Review Hearing. Arbitrator's decision and Orders stand in effect as dated in the original hearing of September 9, 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: October 22, 2013

Residential Tenancy Branch