



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: FF MND MNDC MNR

Introduction

This is an application by the tenant to review the decision, dated September 11, 2013, rendered on the landlord's application for Monetary compensation. At the hearing, the tenant failed to attend and the landlord's application was successful.

Issue(s) to be Decided

This review consideration involves a determination of whether the applicant has met the criteria under the Act to warrant a reconsideration or rehearing of the original application. There are three grounds under which a decision or order of the Dispute Resolution Officer may be reviewed under the *Residential Tenancy Act*, (the *Act*).

These are found in section 79(2) and include the following:

- *a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control;*
- *a party has new and relevant evidence that was not available at the time of the original hearing;*
- *a party has evidence that the director's decision or order was obtained by fraud.*

This tenant has applied under all three of the above grounds.

The issues to be decided are as follows:

- Was the landlord unable to attend the hearing due to circumstances that could not be anticipated and were beyond the landlord's control?
- Has the tenant obtained and submitted new and relevant evidence that was not available through due diligence prior to the hearing?
- Was the decision of the Dispute Resolution Officer obtained by fraud on the part of the landlord?

Background and Evidence

Nonattendance

The tenant is requesting a review based first on the ground that the tenant could not attend the hearing due to circumstances that could not be anticipated and were beyond the tenant's control.

The hearing was scheduled for 9:30 a.m. and the tenant alleged that they called in at 9:20 a.m. and were placed in a different hearing time slot where they remained on the line for 1 hour and 20 minutes. According to the tenant, they called in to Residential Tenancy Branch report the problem and were promised that the matter would be investigated and they would be called, which never transpired.

A printout of call-in records indicated that the arbitrator and one participant, presumably the applicant landlord, had called into the conference on time between 9:30 and 9:32 a.m., and remained on the line until 10:44 a.m., at which time the conference was concluded.

Phone records also show that another participant called into the conference at 9:48 a.m. and remained on the line until 10:45 a.m. However, I find that this participant would not have been connected since the conference hearing had already been held and concluded by the time this call-in was made.

I find that, if this participant was the tenant seeking Review Consideration, it is apparent that the tenant dialed in to the conference call, arriving too late to be connected or even acknowledged on the line.

However, if I accept the tenant's written testimony that the call-in by this tenant was actually made at 9:20 a.m., I find that the tenant called in too early and, in doing so, the tenant failed to follow the instructions outlined in the Notice of Hearing sheet, which specifically direct the parties to call in at 9:30 a.m. sharp.

Given the above, I find that the tenant has not successfully met the criteria for Review Consideration on the alleged ground that the tenant was prevented from attending the hearing. I find that the tenant's failure to follow the written directions in the Notice of Hearing does not qualify as a circumstance that could not be anticipated and was beyond the tenant's control

New Evidence

The tenant's application for Review Consideration based on new and relevant evidence that was not available and could not have been obtained through due diligence prior to

the hearing date, and meeting this ground requires that the tenant prove these elements.

I find that under Rule 4 of the *Residential Tenancy Dispute Resolution Rules of Procedure*, the respondent was required to submit any and all evidence in advance of the hearing and serve it upon the other party. This must include evidence that the respondents intended to rely upon to defend their position at the hearing and must be received at least (5) days before the dispute resolution proceeding.

However, the tenant indicated in the Application for Review consideration, that the evidence, upon which the tenant intended to rely, was already submitted prior to the hearing, as required under the rules of procedure.

Accordingly, I find that the tenant's alleged new evidence would not qualify as new and relevant. Therefore the tenant has failed to meet this ground to support a Review Hearing.

Fraud

Finally, the tenant based the application for review consideration on the ground that the landlord gave fraudulent information. Under the question stating, "*Which information submitted for the initial hearing was false and what information would have been true?*"

The tenant stated

"The landlord lied about the rental suite and the amount of what I owe her. I paid full amount of rent each month." (Reproduced as written)

In answer to the question of "How do you think the false information was used to get the desired outcome?" the tenant wrote:

"There was no damage in the house the house was old and falling apart before I moved in." (Reproduced as written).

A party who is applying for a review on the basis that the original decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided and that it was a significant factor in the decision outcome.

During a dispute resolution hearing, it is a principle of natural justice that each party is completely at liberty to give his or her own version of the facts as they see them. Then the opposing party has an equal opportunity to refute the testimony or argue against any evidence presented.

The fact that one party continues to dispute the evidence and testimony of the opposing party and disagrees with the outcome of a hearing, would not suffice to make this a case of fraud.

In any case, the landlord had withdrawn the claim for repairs and had been seeking rent and loss of rent incurred due to the tenant's failure to complete the fixed-term tenancy, so the condition of the house was not a material factor in the decision made in the tenant's absence.

I find that the tenant has not successfully established that the decision or orders were obtained by fraud.

Analysis

The burden of proof is on the Applicant to prove the criteria for a review hearing has been met under the Act.

The tenant's submission indicated that they could not attend due to circumstances that could not be anticipated and were beyond the tenant's control. However, the hearing instructions required that the tenant call in to the toll-free number and enter the participant's code supplied on the Notice of Hearing at the appointed time. I find that the landlord managed to follow the hearing instructions and was successfully connected to the conference call and the tenant did not do this. The tenant testified that they called in too early and the records show that a participant called into the conference call too late, after the hearing concluded.

I find that the evidence that purportedly would have been presented, had the tenant appeared at the hearing, did not meet the description of "new evidence" as it existed prior to the hearing date and apparently had already been submitted prior to the hearing as required under the Rules of Procedure.

In regard to the tenant's allegation that the decision was obtained by fraud, I find that the tenant's written testimony merely alleging that the landlord's testimony was false is insufficient evidence to prove that the decision was obtained by fraud.

I find that the tenant has not met the burden of proof to justify review reconsideration on any of the 3 grounds put forth, and I find that the application must therefore be dismissed.

Section 81(1) of the Act states that the director may dismiss or refuse to consider the application for one or more of reasons including that the application fails to give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely, the application does not disclose sufficient evidence of a ground for the

review, the application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied, or the application is frivolous or an abuse of process.

Pursuant to *Section 81(b) (ii)* of the *Residential Tenancy Act*, I must dismiss this application for Review Consideration on the basis that it does not disclose sufficient ground for a review. The applicant has not succeeded in demonstrating that the evidence contained in this Application would meet the criteria for granting a review under any of the three grounds cited.

CONCLUSION

The tenant's request for Review Consideration is not successful and the application is dismissed for insufficient proof to establish any of the 3 grounds cited.

Therefore the decision rendered on September 11, 2013, still 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: October 15, 2013

Residential Tenancy Branch