



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC CNE CNL FF LRE MT O

Introduction

On September 17, 2013 a hearing was conducted to hear the tenant's application to cancel Notices to End Tenancy; for more time to make the application; to set restrictions of the Landlord's right of entry to the rental unit; to recover the filing fee; and for other considerations. At that hearing the tenants' application was dismissed. However no Orders were issued as the landlord had also applied for a Direct Request Proceeding to deal with the issue of non payment of rent and an Order of Possession.

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 applicant relies on sections 79(2)(b) of the *Residential Tenancy Act* (the "Act"). The party has new and relevant evidence that was not available at the time of the original hearing.

Facts and Analysis

New and Relevant Evidence

Leave may be granted on this basis if the applicant can prove that:

- he has evidence that was not available at the time of the original hearing;

- the evidence is new,
- the evidence is relevant to the matter which is before the Arbitrator
- the evidence is credible, and
- the evidence would have had a material effect on the decision of the Arbitrator.

Only when the applicant has evidence which meets all five criteria will a review be granted on this ground.

On this ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, the applicant has provided a schedule in which the applicants submit that one applicant is an un-discharged bankrupt and a stay of all proceedings against the tenant is in effect pursuant to s. 69.3(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3. The tenants have provided evidence of this. The tenant submits that this was not provided prior to the hearing as the tenants did not appreciate the significance of the bankruptcy to the proceedings.

The tenants further submit that the Arbitrator did not give the tenants opportunity to address the merits of the landlords claim because the Arbitrator refused to hear the tenants' case or determine the issue on its merits. The Arbitrator granted an Order of Possession based solely on the tenants failure to pay Septembers rent. The tenant submits that this rent was not paid because of the landlords August, 2013 Notice to End Tenancy and the ongoing dispute resolution process. The tenant submits that the non-payment of Septembers rent was not an issue in the dispute resolution proceeding.

The tenant submits that the landlord did not advise the trustee in bankruptcy of the claims against the tenants.

The tenant submits that this evidence is relevant because the Order should not have been issued because of the stay of proceedings in effect.

The tenants application page 1, states that the Order was issued on September 17, 2013 and has not yet been received by the tenants.

I have reviewed the decision issued on September 17, 2013 and find that no Orders were made at the hearing held on September 17, 2013. At that hearing the Arbitrator dealt with the tenants claim to cancel the 10 Day Notice only as the tenant had agreed that rent had not been paid for September, 2013. The tenants application was dismissed and the 10 day Notice was deemed to be valid and in full effect. No Order of Possession was requested by the landlord at that hearing as the landlord was going to wait on his application for Dispute Resolution Proceedings for an Order of Possession

and a Monetary Order. The Orders issued were concerning the landlord's application under another file and not this application.

If the tenants seek a review of Orders issued then the tenants must apply under the correct file number.

Decision

The tenants' application for review is dismissed.

The decision made on September 17, 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: October 16, 2013