



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes OPR, MNDC, MNR, FF

Basis for Review Consideration

On October 4, 2013, a hearing was conducted and a Decision made in which the Landlord obtained an order of possession based on unpaid rent, a monetary order for unpaid rent, recovery of a loan to the Tenants, and for the filing fee for the Application, and to keep the security deposit in partial satisfaction of the claim (the "Decision").

Section 79(2) of the Residential Tenancy Act (Act) states that 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 Tenants have applied for Review Consideration of the Decision based on the first two grounds set out above.

The Tenants have also requested an extension of time, by one day, in which to make this Application. I find the Tenants acted with due diligence and exceptional circumstances apply and therefore, I allow the request for an extension of time to make the Application for Review Consideration.

Issues

1. Do the Tenants have evidence they were unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control?

2. Do the Tenants have new and relevant evidence that was not available at the time of the original hearing?

Applicant's Submission

Unable to Attend

The Tenants write that at the time of the Hearing call, "... I was on the phone trying to secure a loan to repay my landlord." [Reproduced as written.]

New and Relevant Evidence

The Tenants write, "I had spoken to my landlord earlier in the day before the Hearing and he said he would stop the Dispute Resolution process until I had secured a loan." [Reproduced as written.]

Analysis

Based on the submissions of the Tenants and the Decision, I find the Tenants' Application for Review Consideration **must be dismissed, without leave to reapply.**

I find there is insufficient evidence that it was beyond either Tenants' control that they could not phone into the hearing. The Tenants chose to be in another telephone call and nothing prevented them, or at least one of the two Tenants, from calling into the hearing.

I also find the Tenants have not provided any new or relevant evidence. Had the Tenants called into the hearing they could have explained their position. The evidence was available to the Tenants at the time of the hearing and therefore is not new. Furthermore, I find there is insufficient evidence to show the Landlord agreed to "stop" the Dispute Resolution process, particularly when the Landlord is owed several months of rent and went through with the hearing as planned.

In any event it is conclusively presumed by operation of section 46(5) the Act that the tenancy has ended, as the Tenants did not pay the rent owed nor did they dispute the Notice to End Tenancy within the required timelines, as explained in the Notice to End Tenancy they were served.

Therefore, I am satisfied that the Application for review Consideration of the Tenants discloses no basis on which the Decision or orders should be set aside or varied, even if the submissions of the Tenants were accepted (which they are not).

For these reasons I dismiss the Application for Review Consideration of the Tenants without leave to reapply.

Conclusion

I dismiss the Application for Review Consideration of the Tenants.

The original Decision and the orders made on October 04, 2013 are confirmed and remain in full force and effect.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 29, 2013

Residential Tenancy Branch

