



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.

Introduction

The tenants have applied for a review consideration of a decision dated October 9, 2013, granting the landlord and order of possession and a monetary order for unpaid rent.

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 tenants have applied on grounds 1, 2, 3 for the review consideration

Issues

1. Were the tenants 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?
3. Do the tenants have evidence that the director's decision or order was obtained by fraud.

Facts and Analysis

Unable to attend the original hearing:

The tenant writes in their application that, “I was told by (name) if all monies was owing rent and the damage deposit was paid he would cancel this review. I was under the impression it was cancelled, but I did call but was 10 minutes late”.

[Reproduced as written]

In order to meet this test, the application and supporting evidence must establish that the circumstances which led to the inability to attend the hearing were both:

- beyond the control of the applicant; and
- not anticipated.

A dispute resolution hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.

In this case, the tenants knew of the hearing date and failed to call in at the scheduled time. The tenants have submitted no documentary evidence to support the landlord had cancelled the hearing.

Therefore, I find the tenants have failed to establish the grounds that they were unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control.

New and relevant evidence:

The tenants write in their application that they have new and relevant evidence receipts. Filed in evidence are copies of receipts.

The Residential Tenancy Policy Guideline #24 defines new evidence as evidence that has come into existence since the dispute resolution hearing. It also includes evidence which the applicant could not have discovered with due diligence before the dispute resolution hearing.

Evidence in existence at the time of the original hearing which was not presented by the party will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through taking reasonable steps, have become aware of the evidence.

At the original hearing, the landlord submitted rent receipts. Those rent receipts were reviewed and considered by the Arbitrator. In this case, the receipts the tenants have

filed were reviewed and considered at the original hearing. Therefore, I find the tenants have failed to establish the grounds of new evidence.

Fraud

The tenant's writes in their application that the information the landlord submitted for the initial hearing was false. "Rent was paid" "he lied about the rent not being paid"

[Reproduced as written]

However, this statement is contradicted by the handwritten note filed by the tenants and date stamped October 11, 2013, by the Residential Tenancy Branch.

The document stated that, "landlord accepted 300 of 400 balance of rent balance of Aug 100 owing, agreed to continue residency and drop the dispute see Aug 29th rent receipt."

[Reproduced as written]

The document further stated, "...balance of 300 owed as of September 5, 2013."

[Reproduced as written]

The tenant alleged that landlord informed them that the hearing date would be cancelled if rent was paid. However, the evidence submitted by the tenant support rent was not paid in full. I find the tenants have failed to prove the decision or orders were obtained by fraud. This is not an opportunity for the tenants to reargue the case. Therefore, I find the tenants have failed to prove the decision or order was based on fraud.

Decision

Based on the above, the application and on a balance of probabilities, I find the tenants' application must be dismissed.

Therefore, I find the decision and orders made on October 9, 2013, stand and remain in full force and effect. The tenants' application for review is dismissed.

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 27, 2013

Residential Tenancy Branch