



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR MNSD OPR

Introduction

The Tenant applied for a review of an Arbitrator's decision and order of October 30, 2013. In that decision the Tenant had applied to cancel an Notice to End Tenancy, for monetary compensation for damage or loss under the Act, regulations or tenancy agreement, for the Landlord to comply with the Act, for emergency and general repairs to the unit, site or property, to provide services and facilities, to allow the Tenant a reduced rent, suspend or set conditions on the Landlord's right of entry and to allow the Tenant access to the rental unit. The Tenant did not attend the Hearing therefore the Arbitrator dismissed the Tenant's application. The Landlord's application was successful and the Arbitrator issued an Order of Possession for two days after service of the Order on the Tenant, a monetary order in the amount of \$8,695.72 for unpaid rent and utilities and the Landlord was ordered to retain the Tenant's security deposit of \$787.50.

The Tenant has applied for a review consideration of the October 30, 2013 decision and Order.

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

Facts and Analysis

The Tenant said in her review consideration application that she was unable to attend the hearing because of issues with the phone lines. The Tenant said she called in at 8:50 a.m. and was on the line until 9:43 a.m. and then requested help from Telus. The Telus agents were not able to connect the Tenant to the conference call after 9:43 a.m.

The instruction on the Notice of Hearing dated October 2, 2013 that was mailed to the Tenant and Landlord specifically says; "calling prior to the scheduled start time may result in you not successfully entering the hearing". Further the instructions say press "O" for the operator if you encounter a problem joining the conference call or any time during the hearing. The Tenant phoned in 10 minutes prior to the start time and as a result of not following the instructions the Tenant was not connected to the conference call and the Tenant missed the Hearing. It is the responsibility of the participants of a hearing to prepare themselves for the hearing and reading and following the instructions on how to phone into the conference call are part of those responsibilities. Not following the instructions is not a justifiable reason for not attending the hearing as it is not a circumstance that is beyond the Tenant's control. Consequently I dismiss the Tenants application for review based on not being able to attend the hearing for reasons beyond the Tenant's control.

The Tenant also applied for a review based on new and relevant evidence that was not available at the time of the hearing. The Tenant submitted a considerable amount of digital and written evidence that the Tenant says was not available for the Hearing. The Tenant says the evidence was not available because the Tenant was immobilized due to a fractured toe which stopped her from getting the video repaired and submit the evidence in time for the hearing. It should be noted the original hearing was on September 25, 2013 and was adjourned to October 30, 2013 so that the Tenant could prepare and submit evidence. Therefore the Tenant had an additional 36 days to submit evidence.

For an application to be successful under the provision of new and relevant evidence that was not available for the hearing, 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 not available at the time of the hearing. In this is the case the video and written evidence was available prior to October 30, 2013, as the previous Arbitrator adjourned the hearing to give the Tenant time to submit the evidence. It is the responsibility of a participant in a hearing to do whatever is possible to provide the evidence. The reason of a fractured toe is not sufficient to stop a person from getting assistance from an agent to process the evidence for them. Therefore, I find the evidence presented in the Tenant's review consideration application was available prior to the Hearing of October 30, 2013. Consequently the Tenant 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 hearing. As a result I dismiss the Tenant's review consideration application on the grounds of new and relevant evidence not available at the time of the Hearing.

The Tenant's review consideration application is also made on the basis that the Tenant believes the decision and order were obtained by fraud. The Tenant says in her review application that the calculation of the monetary order is incorrect. The Tenant says the

calculation did not reflect cash payments for parking and other payments that were not discussed. The Tenant may not agree with the calculation of the monetary order, but this does not prove the Landlord knowingly gave false information at the meeting. For an applicant to be successful under the fraud provision for a review the Tenant must prove the Landlord knowing gave false information. From the evidence the Tenant submitted I have found nothing that proves the Landlord knowingly provided false information about the calculation for the monetary order. As a result I do not accept the Tenant's contention that the Landlord was fraudulent in the amount of compensation requested.

For the above reasons I do not accept the Tenant's claims that the Landlord obtained the decision and Order of October 30, 2013 by fraud.

Decision

In considering the evidence of the Tenant's review application, I find that the Tenant has not established grounds to be granted a review hearing. Consequently I dismiss the Tenant's application for a Review Hearing. The decision and Order stand in effect as dated in the hearing of October 30, 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: November 18, 2013

Residential Tenancy Branch