



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: AAT CNC ERP FF LAT LRE MNDC MNSD MT OLC RPP RR SS

Introduction

This is an application by the tenant for a review of a decision and order of the director. I note that while the decision is dated November 19, 2013, the order is dated November 19, 2013. I find that this was an obvious typographical error, and I conclude that as the order has been granted pursuant to the decision, both the decision and the order were issued on November 19, 2013.

The tenant applied for a review on the grounds that she was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond her control; she has new and relevant evidence that was not available at the time of the original hearing; and she has evidence that the director's decision or order was obtained by fraud. The tenant also applied for an extension of time to make her application for review.

Preliminary Issue – Extension of Time

The tenant indicated that she received the decision on November 25, 2013, and she received the order on November 26, 2013. When a decision or order relates to an order of possession, the application must be submitted within two days after receiving the decision or order. In this case, the tenant submitted her application for review on November 27, 2013, within the required time frame. The tenant therefore does not require an extension of time to make this application.

Issues

Has the tenant provided sufficient evidence to support one of the indicated grounds for review?

Facts and Analysis

Original Hearing and Decision

The original hearing was convened pursuant to the tenant's application. The tenant, the landlord and counsel for the landlord participated in the teleconference hearing. The arbitrator determined that the issue that took precedence was the notice to end tenancy, and the hearing only dealt with that issue. The arbitrator received a substantial amount of documentary evidence and heard testimony from both parties. Both parties acknowledged that they had presented all of the relevant evidence they wished to present. Additionally, the arbitrator asked the tenant several times whether she would like the hearing to continue on another day, and the tenant advised that she did not wish any further time to continue. Based on the evidence, the arbitrator determined that the notice to end tenancy for cause dated September 24, 2013 was valid, and the landlord was granted an order of possession pursuant to the notice.

Tenant's Submissions

I note that the tenant's application for review was barely legible; however, I have made all effort to determine the relevant portions of the tenant's submissions.

In regard to the first ground for review, unable to attend, the tenant wrote that she was there, but the arbitrator was not controlling the landlord's lawyer or the hearing.

In regard to the second and third grounds for review, new and relevant evidence and fraud, the tenant's submissions appear to be re-argument of issues she either raised or ought to have raised in the hearing.

Analysis on Review

The tenant's application for review on the ground that she was unable to attend the hearing clearly must fail, as the tenant did in fact attend the hearing.

In regard to the ground of new and relevant evidence, the arbitrator noted in the decision that the tenant had presented all of the relevant evidence she wished to present, and the tenant repeatedly declined the arbitrator's offer to adjourn the hearing. I therefore find that the tenant's review application cannot succeed on the ground of new and relevant evidence.

In regard to the claim of fraud, I find that the tenant's submissions in this application for review consideration merely consist of arguments that the tenant had the opportunity to present during the hearing. It is clear from the decision dated November 19, 2013 that both the landlord and the tenant provided their evidence, and the arbitrator preferred the evidence of the landlord over that of the tenant. The fact that the tenant disagrees with

the conclusion reached by the arbitrator does not amount to fraud. I therefore do not accept the tenant's claim that the arbitrator's decision was obtained by fraud.

A review hearing will only be granted where there is sufficient evidence to support one of the three grounds for review under section 79 of the Act. In this case, I find that the tenant has not provided sufficient evidence to establish that she has grounds for a review of the original decision and order.

Decision

I dismiss the application for review and confirm the original decision and order of November 19, 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: December 6, 2013