



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: CNR

Introduction

A Hearing was held on November 20, 2013 to consider cross applications. The Landlord applied for an Order of Possession, a Monetary Order for unpaid rent and loss of revenue, and to retain the security deposit in partial satisfaction of the Landlord's monetary award.

The Tenant's application sought to cancel the Notice to End Tenancy for Unpaid Rent.

On November 21, 2013, a Decision was issued and the Landlord was provided with an Order of Possession and Monetary Order in the amount of \$11,650.00 after setting off the security deposit.

The Tenant's Application for Review Consideration indicates that she received the Decision and Order as follows:

	<u>Date Issued</u>	<u>Date Received</u>	<u>How You Received It</u>
Decision	Nov 21/13	Nov 28/13	mail letter
Order	Jan 02/13	Jan 05/13 + Nov 29/13	mail letter

An Application for Review Consideration must be filed within specific time frames as set out in Section 80 of the Act. The Tenant filed her Application within the time limit allowed for the Decision/Order issued November 21, 2013, but not for the Decision/Order issued January 2, 2013.

Section 79(2) of the Residential Tenancy Act provides that a party to a 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 Tenant indicated on her Application for Review that she is seeking a review on the first ground as set out above. However, she has completed the sections on the Application for all three grounds and therefore I will consider all three grounds.

Issues

1. Has the Tenant shown that she was unable to attend the Hearing due to circumstances beyond her control that were not anticipated?
2. Has the Tenant provided new and relevant evidence?
3. Has the Tenant established that the Decision or Orders were obtained by fraud?

Background and Evidence

The Tenant provided the following explanation for being unable to attend the Hearing:

"THERE WAS NO HEARING, DIRECT REQUEST. I APPLIED FOR DISPUTE RESOLUTION WITHIN 5 DAYS. PLEASE SEE PREVIOUS FILES [file numbers given].

THE LANDLORD WITHHELD ADDRESS UNTIL THE 10 DAY NOTICE. ALSO, FILED DIRECT REQUEST WITH THE KNOWLEDGE OF MY APPPLLLICATION FOR DISPUTE RESOLUTION DEC 31/12."

[reproduced as written]

In the section of the Application for "New and Relevant Evidence", the Tenant writes:

"EVIDENCE REMAINS ON COMPUTER – LAPTOP WAS SMASHED IN A BREAK IN, IN AUG, NOT STOLEN!! - BREAKS INS (2) BOTH WERE THROUGH DOORS W/O DAMAGE! (KEYS!)"

[reproduced as written]

In answer to the questions on the Application with respect to the ground of fraud, the Tenant submits:

Which information submitted for the initial hearing was false and what information would have been true?

- “- LANDLORD FORGED RECIEPT FOR HEATING
- LANDLORD APPLIED 4 DIRECT REQUEST KNOWING I HAD APPIED TO DISPUTE 10 DAY NOTICE.”

How did the person who submitted the information know it was false?

“THE RECIEPT WAS CREATED TO MAKE AN EFFORT TO CONCEAL A RETALITORY EVICTION... ALSO REFUSED TO GIVE ADDRESS UPON REQUEST ON DEC 31/12 SO I COULD FILE DISPUTE RESOLUTION.”

How do you think the false information was used to get the desired outcome?

“ABSOLUTLY! – LANDLORD’S CLAIM FRADULENT ON ORIGINAL APPLICATION. – LANDLORDS DIRECT REQUEST APPLICATION IS FRAUDULENT AND HAS NO COMPLETE LEASE & IS WITNESS BY [name of witness] WHO IS THE [Landlord]. REVIEW CLAIMS THE APP & DISPUTE RESOLUTION WAS FILED ON JAN 02/13?”

[reproduced as written]

Analysis and Findings

I have considered the Tenant’s submissions and provide the following findings with respect to each of the grounds for review.

Unable to Attend

The Tenant signed into the teleconference on November 20, 2013, and gave documentary evidence and verbal testimony at the Hearing. Although her Application is not clear, it would appear that the Tenant is referring to the proceeding that took place on January 2, 2013. A search of the Residential Tenancy Branch’s electronic filing system indicates that on January 10, 2013, the Tenant filed an Application for Review with respect to the January 2, 2013, Decision and Orders, which was dismissed.

I find that the Tenant attended the Hearing on November 20, 2013, and therefore this ground for review is dismissed.

New and relevant evidence

On her Application for Review, the Tenant writes, “RTB has all of the evidence in the files.”

The Tenant did not provide any new documentary evidence to substantiate this ground for review, or indicate how the evidence that was on her laptop in August was relevant to the Decision and findings made in the Hearing of November 20, 2013. Therefore, I find that the Tenant has not proven this ground for review.

Fraud

The Tenant's submissions with respect to this ground for review are unclear. The Tenant states that the Landlord forged a receipt for "heating", but provides no further details.

In order to succeed in an Application for Review, the applicant must show a reasonable likelihood that the Decision would have been different had the fraudulent information not been relied upon. The Tenant's submission that the Landlord forged a receipt for heating could have been brought up and considered at the Hearing on November 20, 2013. The review process is not an opportunity to re-argue the case.

The Tenant made reference again to the proceeding that took place on January 2, 2013. The Tenant's Application for Review on that particular proceeding was dismissed. There is no provision in the Act for a party to make a subsequent application to review a decision made on a Review Application.

Having found the Tenant has not provided full particulars of the issues submitted for review, or sufficient evidence or a basis to grant a review hearing, this Application for Review is dismissed pursuant to Section 82 of the Act.

Conclusion

The Tenant's Application for Review is dismissed. The Decision and Orders dated November 21, 2013, stand and remain enforceable.

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 05, 2013