



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD

Introduction

Section 79(2) of the *Residential Tenancy Act* provides that a party to a dispute may apply for a review of a decision or order. On November 25, 2013 an Arbitrator issued a decision awarding the tenant double the security deposit. The landlord's application for review was filed on the basis the landlord has evidence that the director's decision or order was obtained by fraud.

Issue(s)

Has the landlord provided evidence that the decision was obtained by fraud?

Background and evidence

The landlord submits that the tenant had moved out of the rental unit, leaving another individual residing in the unit, and had assigned the tenancy agreement to that person. As evidence the tenancy was assigned the landlord provided an email, purportedly from another resident of the building, confirming that the tenant had moved out of the unit at least one month before the other individual.

The landlord also claims that he has a text message from the tenant confirming that she filed her Application for Dispute Resolution on behalf of the other individual. The landlord took a photograph of a cell phone; however, the image is too dark to be legible.

Analysis and decision

An application for review is not an avenue to re-argue or present arguments that should have been made at the original hearing. I note that in the landlord's written submissions, provided prior to the original hearing, the landlord did indicate the tenant had moved out and another individual not named on the tenancy agreement remained in the unit. Thus, this application would appear to be an attempt to re-argue and provide more evidence in support of his argument.

A tenant that ceases to reside in a rental unit, leaving another individual to continue residing in the unit does not, in itself, mean the tenancy was assigned. Where a tenant leaves and another individual remains in a unit and the landlord takes rent from that individual it may be found that rent was paid on behalf of the tenant. Alternatively, it may be found that a new tenancy formed with the individual that remained in the unit. The Act provides that an assignment requires the written consent of the landlord and, in this case, the landlord did not provide evidence that he had consented to an assignment of this tenancy in writing.

The landlord remains at liberty to file his own Application for Dispute Resolution seeking damages or loss from the tenant.

In light of the above, I find the landlord did not establish the tenant was fraudulent or that the decision would have been different had the landlord's evidence been before the Arbitrator. Therefore, I dismiss this Application for Review Consideration.

Decision

The landlord's Application for Review Consideration is dismissed. The decision and Monetary Order issued on November 25, 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 24, 2013

Residential Tenancy Branch