



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Review Consideration Decision

Dispute Codes:

Introduction

The Tenant applied for a review of an Arbitrator's decision of April 11, 2012. The hearing of April 11, 2012 was an adjournment from a previous interim decision made by a different Arbitrator on December 15, 2011. The interim decision on December 15, 2011 adjourned the hearing to a face to face hearing as a result of a request from the Tenant as the Tenant is hearing impaired. The adjourned hearing was scheduled for April 11, 2012. The new Notices of Hearing were prepared by the Residential Tenancy Branch as sent out to the addresses on file. It should be noted there is no documentation on file that the Tenant supplied a new mailing address or mailing instructions to the Residential Tenancy Branch and as a result the Notice of Hearing was sent to the Tenant's last known address which was the dispute address. As the Tenant had moved out of the dispute address on January 31, 2012 the hearing package was returned to sender (Residential Tenancy Branch). At the adjourned hearing on April 11, 2012 the Landlord attended, but neither the Tenant nor a representative for the Tenant appeared at the hearing. Consequently the application was dismissed without leave to reapply.

The Tenant has now submitted an application for review consideration indicating the Tenant was not aware of the hearing on April 11, 2012 and did not receive the April 11, 2012 decision until December 3, 2013. Further the Tenant indicated that information about the decision only came to the Tenant because on enquiries that the Tenant's agent made with the Residential Tenancy Branch on December 1, 2013.

The Tenant is now requesting a new hearing to hear the Tenant's claims in the original application dated November 30, 2011 which were to dispute a rent increase, to cancel the notice to end tenancy, for monetary compensation of \$9,963.43, to have the

Tenant's security deposit returned, for the Landlord to comply with the Act, for the Landlord to provide services and facilities, to set condition on the Landlord's right of entry and for other considerations.

It should be noted that the interim decision of December 15, 2011 indicated that the Order of Possession dated November 16, 2011 from a previous hearing held on November 16, 2011 was still in full effect and was not affected by the interim decision of December 15, 2011. The effective vacancy date on the November 16, 2011 Order of Possession was 1:00 p.m. on January 31, 2012.

The Tenant has applied for a review consideration of the April 11, 2012 decision dismissing the Tenant's application without leave to reapply, because the Tenant did not attend the hearing.

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 the Tenant's 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 the review consideration application that the Tenant was unable to attend the hearing on April 11, 2012 because the Tenant did not receive the Notice of Hearing, which is the information on the date, time and place of the hearing. The reason the Tenant said they did not receive the Notice of Hearing is because the Tenant moved to a new address. As well the Tenant said they thought their legal counsel was handling the process for them and that all the information would go to the legal counsel. This did not happen and the Tenant indicated in the review application that they enquired about what happened to their application on December 1, 2013, approximately 20 months after the hearing on April 11, 2012. The Tenant is requesting a new hearing because the Tenant did not know that the hearing of April 11, 2012 took place. It is the responsibility of a Hearing participant to provide accurate information to the hearing process and if that information changes then it is the responsibility of the participant to inform the Residential Tenancy Branch as well as the other participants of any changes to their information. The mail address is a crucial piece of information and as the Tenant moved January 31, 2013 as a result of the November 16, 2011 Hearing and Order of Possession and that information was again indicated in the December 15, 2011 interim decision, it was the Tenant responsibility to update the Residential Tenancy Branch and the other participants as soon as the Tenant had a new address. If the Tenant had done this or provided the post office with forwarding mail information the Tenant would have received the Notice of Hearing and consequently would have known about the April 11, 2012 hearing, that was adjourned on the Tenant's request to be a face to face hearing. As a result I find the reason for the Tenant not attending the hearing on April 11, 2012 was not beyond the Tenant's control. The Tenant should have updated the Residential Tenancy Branch and the other participants with the Tenant's new mailing address or at least what address the Tenant wanted correspondence to go to. The Tenant did not do this so the Tenant is responsible for not receiving the Hearing information. Consequently I dismiss the application for a review hearing on the grounds of circumstances beyond the Tenant's control resulted in missing the Hearing.

Further the Tenant submitted an Affidavit of the Tenant's view of what happened in this tenancy and the circumstances around the hearings as well as a number of emails to support the Tenant's claims for a review on the grounds of new and relevant evidence and that the Landlord received the decision by fraud. I have reviewed the Affidavit and the emails and I have not found any new or relevant corroborated evidence that was unavailable at the time of the Hearing on April 11, 2012. What the Tenant submitted is the Tenant's writings and the Tenant's views of the situation. I find that the Tenant has not provided any new and relevant information that is corroborated by an arm's length source. As a result I dismiss without leave the Tenant application for a review hearing on the grounds of new and relevant information.

In addition the Tenant is claiming the Landlord received the decision of April 11, 2012 by fraud because the Landlord did not disclose that the Tenant did not live at the rental unit after January 31, 2012 and that is why the Tenant did not get the Notice of Hearing for the April 11, 2012 hearing. The decision by the Arbitrator was made because the Tenant did not appear at the Hearing the Landlord was not responsible to explain why the Tenant was not at the Hearing. All the parties knew the Tenant had moved out of the rental unit because the Order of Possession was for January 31, 2012. I find that the Tenant has not established grounds for a review hearing based on the Landlord receiving the decision by fraud. The Landlord was not responsible to provide any testimony at the Hearing of April 11, 2012. I dismiss without leave the Tenant's request for a review Hearing on the grounds of 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 without leave the Tenant's application for a Review Hearing. The decision stands in effect as dated in the original hearing of April 11, 2012.

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: January 06, 2014

Residential Tenancy Branch