



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Review Consideration Decision

Dispute Codes: FF MND MNSD

Introduction

On January 6, 2014 a dispute resolution hearing was conducted to resolve a dispute between these two parties. The Landlord had applied for a monetary order for compensation for damage to the unit, site or property, to keep all or part of the security deposit and recovery of the filing fee. The Tenants had also filed an application for a monetary order for the return of double the security deposit and recovery of the filing fee. The Landlord was partially successful and had established an entitlement of \$132.96. The Tenants were successful in establishing an entitlement of \$1,450.00. In offsetting these claims, the Arbitrator in the original hearing awarded the Tenant a monetary order for \$1,317.04. The Landlord has now applied for review of this decision/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

Does the Applicant have new and relevant evidence that was not available at the time of the original hearing?

Facts and Analysis

The applicant states, "I followed the instruction in the back of move out inspection form (RTO-27). Item 25 and 27 and inform the tenant in 7 days after the termination of rental about the cost of damage and the reason of my withholding the damage deposit was to off set the cost of the damage, at no time I was aware that I have to file the claim with

RTB and then proceed according to the RTB decision. I feel I was not able to explain this circumstances during my hearing Therefore I believe being penalized for this mistake and rewarding the tenant for my mistake is not fair.”

The applicant has failed to provide any new and relevant evidence that was not available at the time of the original hearing. Residential Tenancy Branch Policy Guidelines state, “New evidence includes evidence that has come into existence since the dispute resolution hearing. It also includes evidence which the applicant could not have discovered with due diligence before the hearing. New evidence does not include evidence that could have been obtained, such as photographs that could have been taken or affidavits that could have been sworn, before the hearing took place. Evidence in existence at the time of the original hearing which was not presented by the party will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through taking reasonable steps have become aware of the evidence. Evidence is relevant if it relates to or bears upon the matter at hand, or tends to prove or disprove an alleged fact. Evidence that would have had a material affect upon the decision is such that if believed and when taken with the other evidence introduced at the hearing, it could reasonably be expected to have affected the result.”

The applicant has also failed to provide any details of why they were not able to present these circumstances in the original hearing. Nevertheless, these circumstances would not be relevant to the Residential Tenancy Act in rendering a decision. The applicant does not dispute the established facts. Instead the applicant states that they were unaware of the law. The Landlord is operating a business which is heavily legislated and has a responsibility to familiarize themselves with that law. Ignorance of the law is not a defence.

Decision

The Landlord’s application for review is denied. The decision made on January 9, 2014 stands.

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 28, 2014

Residential Tenancy Branch