



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

Introduction

The Tenant has applied for a review of the Decision and Orders of a Dispute Resolution Officer dated December 31, 2013. The Decision and Orders granted an *order of possession and a monetary order to the Landlord*.

The Tenant submits that she received the Orders on January 6, 2013, at 4:00 p.m., under her door.

Issues

Does the Tenant's Application contain sufficient reasons to support grounds for a review?

Background

Division 2, Section 79(2) of 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 following 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 relies on the all three grounds for review as indicated above.

The Decision and Orders were granted through the direct request process. There is no participatory hearing held in this process, rather it is a proceeding done by written application only, and the Arbitrator was satisfied that the Tenant was served with Notice of the direct request proceedings in accordance with the provisions of the Act.

As this is a proceeding done by written application of the Landlord, there is no provision for the Tenant to provide documentary evidence. **The only ground for review of a Decision granted through the direct request process is fraud.**

In her Application for Review Consideration, the Tenant writes:

“My landlord (agent) cancelled the eviction notice the next day after giving it to me. He said he’s cancelling the eviction so I can use the money to find another place to live as he wants me out.

He knew full well that he cancelled that eviction notice. He served it to me 2 weeks after cancelling when it’s too late for me to do anything about it.

He asked me on December 23/13 if I found a new place. I said “yes” but won’t be ready until February 1, 2014. He knew I was moving out and still served me and order of possession using the cancelled eviction notice as a tool.”

Analysis

A notice to end tenancy can be waived or withdrawn by the issuing party, and a new or continuing tenancy created, only by the express or implied consent of both of the parties.

Expressed consent arises where there has been a voluntary, intentional relinquishment of a known right, in this case the Landlord’s right to payment of rent. The Tenant provided no documentary evidence that the Landlord had waived his right to payment of rent.

Implied consent arises if the conduct of the party (in this case, the Landlord) has induced the recipient of the notice to end tenancy (in this case, the Tenant) to believe that he has waived the notice to end tenancy. There must be a clear and decisive act by the Landlord to indicate that he waived the notice to end tenancy for unpaid rent. In her Application for Review Consideration package, the Tenant provided a copy of an Application for Dispute Resolution that she filed on December 13, 2013, seeking to cancel a Notice to End Tenancy for Cause.

I find that the Tenant provided insufficient evidence that the Landlord has waived his right to end the tenancy. The Tenant does not deny that she has not paid rent that was due.

Therefore, I dismiss the Tenant’s application.

Conclusion

The Tenant’s Application for Review is dismissed.

The Decision and Orders made on December 31, 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: January 16, 2014