



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC OLC

Introduction

On January 24, 2014, the Residential Tenancy Branch received an Application for Review Consideration from the Tenant in the above matter. The Tenant acknowledges she received the Decision and Order of possession on January 21, 2014. The Arbitrator had dismissed the Tenant's Application for Dispute Resolution which sought to cancel a one month Notice to End Tenancy for cause, including but not limited to repeated late payment of rent.

The Tenant did not request additional time to make this Application for Review Consideration.

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.

In this instance the Tenant cites grounds 2 and 3 as set out above.

Issues

1. Has the Tenant made this Application for Review Consideration on time?
2. Has the Tenant proven there is new and relevant evidence that was not available at the time of the original hearing?
3. Has the Tenant proven the decision or order was obtained by fraud?

Facts and Analysis

Under section 80 of the Act, the Tenant was required to file the Review Consideration Application within two day of receiving the decision or order. In this instance the Tenant filed late, as she filed on the third day after receiving the decision or order.

Therefore, I find the Tenant's Application must be dismissed, as it was filed out of time.

Furthermore, even if the Application had been filed on time (which I do not find), I am satisfied that the Application discloses no basis on which the decision or order should be set aside or varied.

The evidence the Tenant seeks to supply as new and relevant evidence regarding late payment of rents was available to the Tenant prior to the hearing; however, she did not enter it into evidence, despite the fact that late payments of rent were in issue. Therefore, I am unable to find the Tenant has supplied new evidence for the Review.

The Arbitrator also based the finding of repeated late payments of rent on the Tenant's own testimony, as set out in the decision on page 3:

“Tenant request to cancel 1 Month Notice – Residential Police Guideline #38 – Repeated Late Payment of Rent states that three late payments are the minimum number sufficient to justify a notice under this provision. As a result of the tenant's testimony described above, I find that the tenant paid her rent late on three occasions as described above...”

[Reproduced as written.]

As the decision regarding late payment of rent was based on the Tenant's testimony, I find she has insufficient evidence to prove the decision was obtained by fraud. The Tenant is also not able to reargue the issues of the hearing in an Application for Review Consideration.

For the above reasons, I dismiss the Tenant's Application for Review. The decision and order made on January 14, 2014, stand and remain in full force and effect.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 28, 2014

