



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: AS CNC CNR ERP FF MNDC RP RR

Introduction

This is the Tenants' application for review consideration of a decision, order of possession and a monetary order granted on December 19, 2013 (the "Original Decision"). I note that portions of the claims have been adjourned to a later hearing date. This review consideration deals only with the final orders granted in the Original Decision involving the order of possession and the monetary order granted to the Landlords.

Division 2, Section 79(2) under the *Residential Tenancy Act* (the "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.

The Tenants have applied on all three of the above grounds.

Issues

1. Were the Tenants unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control?
2. Do the Tenants have new and relevant evidence that was not available at the time of the original hearing?
3. Do the Tenants have evidence that the director's decision or order was obtained by fraud?

Facts and Analysis

The application contains information under section **C. 1. Unable to Attend**

One of the Tenants writes she was not able to attend the hearing because she had a panic attack and an anxiety attack. The Tenant writes that the other Tenant was left trying to organize everything. The Tenant writes she was unable to provide a doctor's note as her doctor's office was closed during the holidays.

The application contains information under section **C. 2. New and Relevant Evidence**

The Tenant writes that she has requested text messages from a phone service provider since July of 2013. The Tenants write that they have witnesses who are willing to give statements that the Tenants had paid rent to the Landlords. The Tenant alleges they have provided emails showing the Landlords altered their evidence.

The application contains information under section **C. 3. Fraud**

The Tenants allege that the Landlords altered text messages regarding rent and subletting. They write proof of this will be provided at the next hearing.

The Original Decision found the Tenants had not paid rent and granted an order of possession based on a 10 day Notice to End Tenancy issued November 2, 2013. I note that, having granted the order of possession and monetary order on this Notice to End Tenancy, the Arbitrator did not analyze a one month Notice to End Tenancy for cause or a second 10 day Notice to End Tenancy for unpaid rent. The Arbitrator granted a monetary order for three months of unpaid rent.

Decision

Based on the above, the evidence and application for review consideration I find that **the Tenants' application for review consideration must be dismissed.**

On the first ground, one of the Tenants did appear at the hearing and presented arguments on behalf of both Tenants. According to the Original Decision the appearing Tenant explained the other Tenant was ill and that the appearing Tenant would be representing the Tenants.

A dispute resolution hearing is a formal, legal hearing, and the parties are expected to take reasonable steps to attend the hearing. In this instance, one of the Tenants did attend the hearing and informed the Arbitrator he represented the Tenants. Therefore, I find one of the Tenants attended the hearing and therefore, dismiss this ground of the application.

On the second ground, I find the Tenants have not provided any new or relevant evidence. They state they have not got the text messages from a phone service provider regarding messages from July of 2013. They also say they could obtain statements from witnesses; however, they did not provide these statements. Without the text messages or these statements supplied in evidence there is no way to

determine if the evidence is new or relevant. Evidence for a review consideration must be provided with the application. This leads me to find the Tenants have failed to prove they have new and relevant evidence.

On the third ground, I find the Tenants have failed to prove the Landlords committed fraud. The Original Decision was based on unpaid rent, and the arguments of both parties on this issue were considered carefully in the Original Decision. The Tenants have failed to explain how the alleged fraud was used to obtain the Original Decision, as the Arbitrator's reasons indicate they found the Tenants had not paid rent and upheld the Notice to End Tenancy. In other words, the Tenants have failed to prove they did pay rent or that the Landlords were fraudulent claiming for unpaid rent, when it was in fact paid.

I further find the Tenants are attempting to use the review section of the Act as a means of avoiding the effects of Section 77(3) of the Act and this is not the purpose of section 79 of the Act.

Lastly, even if I were able to accept any of the three grounds for review set out by the Tenants (which I do not), I find the Tenants' application discloses no basis on which the Original Decision should be set aside or varied.

For all of the above reasons I dismiss the Application for Review Consideration of the Tenants.

The Original Decision (and both orders) made on December 19, 2013, 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 21, 2014