



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR MNSD OPR

Introduction

This Application was filed by the tenant on December 31, 2013, seeking a Review Consideration of the Decision and Orders dated December 24, 2013 and having received the Decision and Orders by hand on December 30, 2013. The Decision and Orders resulted in the Arbitrator granting the landlord(s) an order of possession and a monetary order for \$200.00.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of a 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 tenant has applied on the second and third grounds.

Issues

- Has the tenant provided sufficient evidence that the tenant has new and relevant evidence that was not available at the time of the original hearing?
- Has the tenant provided sufficient evidence that the director's decision was obtained by fraud?

Facts and Analysis

The Application contains information under section C2, on why the tenant has new and relevant evidence with respect to the hearing held on December 19, 2013:

The tenant writes in his Application:

"Letter from last tenant confirming amount of rent paid."

[Reproduced as written.]

The Application contains information under section C3, from the tenant alleging that the director's decision was obtained by fraud.

The tenant writes in his Application:

"Letter from previous tenant. Letter from property manager ([illegible] August 2013) confirming rent amounts.

Landlord submitted incorrect rent increase + refused to acknowledge or correct. The landlord should have known what the rent actually is.

I went to RTB to see if I should file against the eviction notices for non-payment of rent as I disagreed with it. I was advised I didn't have to file and should keep copies of my cheques. The landlord filed for OP and got it when they gave me a notice for non-payment based on the wrong rent."

[Reproduced as written.]

The tenant submitted in evidence a copy of the Decision dated December 24, 2013, a document dated December 14, 2013 from VP, a Notice of Rent Increase dated June 25, 2013, which is the same as the Notice of Rent Increase dated June 25, 2013 contained on the original hearing file, a second document from VP dated September 8, 2013, two copies of cheques, a third document from VP, dated November 4, 2013, a document dated December 31, 2013 from the tenant, the order of possession, the monetary order, a document dated December 30, 2013 from the landlords, and a copy of an e-mail from LL dated December 22, 2013.

Decision

Based on the above, the evidence and Application submitted, and on a balance of probabilities, I find the following.

Firstly, I will determine if the tenant submitted his Application within the required timeline under the *Act*. Section 80 of the *Act* states that an applicant must make an application for Review Consideration within 2 days after a copy of the decision or order is received. I find the tenant did apply within 2 days as required under section 80 of the *Act* as the tenant received the decision and orders by hand on December 30, 2013, and filed the Application for Review Consideration the following day on December 31, 2013.

In order to be successful on the second ground for review, the tenant must prove that new and relevant evidence exists that was not available at the time of the original hearing. The tenant has failed to include "why" the evidence was not available at the time of the original hearing held on December 19, 2013, and "how" it is relevant.

Therefore, I **dismiss** this portion of the tenant's Application due to insufficient evidence. At the very least, the tenant should have fully explained in his Application both "why" and "how" the letter was relevant and why it was not available at the time of the original hearing, which the tenant failed to do.

In order to be successful on the third ground for Review, the tenant must prove based on a balance of probabilities that the director's decision or orders were obtained by fraud. The Notice of Rent Increase submitted by the tenant is the same Notice of Rent Increase submitted by the landlord on the original file. As a result, I do not find that that document supports that the director's decision or orders were obtained by fraud.

In addition, the tenant confirms in his Application that he did not dispute the Notice issued to him for non-payment of rent, which is a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") issued pursuant to section 46 of the Act. A copy of the 10 Day Notice was submitted in evidence by the landlord and is in the original hearing file.

For the tenant to be successful on the third ground, the tenant must provide sufficient evidence to support that the director's decision or orders were based on fraud. In regard to the tenant's claim of fraud, I find that the tenant's Application merely consists of the same argument that the tenant presented during the hearing. It is clear from the decision dated December 24, 2013 that the Arbitrator considered the tenant's testimony that the rent was less than what was alleged by the landlord, and that the Arbitrator found on the balance of probabilities that he preferred the evidence of the Landlord over that of the tenant and wrote "The Tenant confirmed in his direct testimony that upon receiving the notice on November 2, 2013 that he did not pay the rent amount owed nor did he file an application for dispute resolution. The Tenant is presumed to have accepted the notice. The Landlord has established the grounds for an order of possession."

The fact that the tenant disagrees with the decision issued by the Arbitrator does not amount to fraud. The tenant has failed to provide supporting evidence to prove that the decision or orders were obtained by fraud. I find that the tenant is merely attempting to re-argue the matter, which was decided upon on December 24, 2013. Therefore, I **dismiss** this portion of the tenant's Application due to insufficient evidence.

As the tenant's Application has been dismissed on both the second and third grounds, the Decision, Order of Possession and Monetary Order dated December 24, 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 *Residential Tenancy Act*.

Dated: January 8, 2014

Residential Tenancy Branch