Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: CNR MNDC

Introduction

On October 29, 2013 December 23, 2013 Arbitrator RW provided decisions on the tenants' Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy and for compensation for damage or loss.

The issues raised in the tenants' Application for Dispute Resolution were first considered by Arbitrator AH in a hearing on May 30, 2013; after which she wrote a decision on May 31, 2013. This decision cancelled a 10 Day Notice to End Tenancy issued on May 10, 2013 and granted the tenant a rent reduction to $0.00 per month until repairs were made.

That landlord sought, through an Application for Review Consideration, and was granted by Arbitrator EN a new hearing and the original decision and orders were suspended until a decision was rendered from the new hearing.

On August 26, 2013 a new hearing was conducted and a new decision rendered by Arbitrator JW granted the landlord an order of possession to end the tenancy and dismissed the monetary portion of the tenants' claim with leave to reapply because the Arbitrator felt it was unrelated to the issue of possession.

The tenants then sought, through their own Application for Review Consideration, and were granted a new hearing by Arbitrator MC. A new hearing was conducted on October 22, 2013.

On October 29, 2013 Arbitrator RW wrote an interim decision cancelling two notices to end tenancy and granting an adjournment to December 17, 2013 as they had run out of time to complete the portion of the tenants' Application for Dispute Resolution seeking compensation. On December 23, 2013 RW wrote a decision dismissing the tenants' claim for compensation.

Division 2, Section 79(2) under the *Residential Tenancy Act (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 submit in their Application for Review Consideration that that they have new and relevant evidence that was not available at the time of the original hearing; and they have evidence that the director's decision was obtained by fraud.

Issues

It must first be determined if the tenants can be granted a new hearing based on a second Application for Review Consideration for the same proceeding.

It must next be determined if the tenants have submitted their Application for Review Consideration within the legislated time frames required for reviews.

If the tenants have submitted their Application within the required time frames it must be decided whether they are entitled to have the decisions of October 29, 2013 and December 23, 2013 suspended with a new hearing granted because they have provided sufficient evidence to establish that they have new and relevant evidence that was not available at the time of the original hearing or they have evidence the landlord obtained the decision based on fraud.

Facts and Analysis

Section 79 (1) of the *Act* states that a party to a dispute resolution proceeding may apply for a review of the decision and order. Section 79(7) states that a party to a dispute resolution proceeding may make an application under this section only once in respect of the proceedings.

Black's Law Dictionary, 7th Edition defines a proceeding as the regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment. For the purposes of Section 79 of the *Act* the Residential Tenancy Branch generally allows only one Application for Review Consideration per party per Application for Dispute Resolution.

However, in the case before me I find that Arbitrator JW changed the nature of the tenants' Application by dismissing a portion of it without consideration after Arbitrator AH had a made a ruling on the issues and then Arbitrator RW included all matters raised in the original Application for Dispute Resolution. Therefore, I find that there has been more than one proceeding concluded in these matters.

As such, I find the tenants' 2nd Application for Review Consideration is actually only the first Application for Review Consideration on the proceeding adjudicated by Arbitrator RW. I will allow the consideration of the merits of the tenants' Application for Dispute Resolution.

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 2 days after a copy of the decision or order is received by the party, if the decision relates, at least in part, to a landlord's notice to end tenancy for non-payment of rent.

From the decisions of May 31, 2013, August 26, 2013, October 29, 2013, and December 23, 2013 the issues before the Arbitrators were to landlord's Notices to End tenancy for non-payment of rent and the tenants' monetary claim. As such, I find the decision and order the tenants are requesting a review allowed 2 days to file their Application for Review Consideration.

From the tenants' submission they received the December 23, 2013 decision on January 13, 2014 and filed their Application for Review Consideration with the Residential Tenancy Branch on January 15, 2015 (2 days after receipt of the decision). I find the tenants have filed their Application for Review Consideration within the required timelines.

The tenants submit that they have new and relevant evidence. They state that they had submitted the evidence to the Residential Tenancy Branch on December 10, 2013 and that despite the hearing being conducted on December 17, 2013 the Arbitrator did not consider the evidence as she considered it late.

I note that there is no notation in the December 23, 2013 decision that states the Arbitrator did not consider any of the tenants' evidence nor is there any notation that the Arbitrator specifically precluded any evidence that may have been late. I also note that there is no indication that the tenant sought an adjournment to allow time for the respondent landlord to respond to any alleged late evidence.

In the tenants' submission he has included a copy of the evidence he states the Arbitrator would not consider. The evidence was submitted in the form of a DVD that contains logs of disturbances; photographs of the rent unit; copies of multiple Notices to End Tenancy; copies of notices to enter the premises by the landlord; copies of previous decisions and orders; folders of "details of the landlords past and current violations against the tenant's human rights and the tenancy act sections'; and copies of videos taken of the landlord and his agent from January 2103 to December 2013.

When a party submits evidence on a DVD that party must adhere to the Residential Tenancy Branch Rule of Procedure #11.8 that stipulates that digital evidence includes photographs, audio recordings, video recordings or material provided in an electronic format that cannot be readily reproduced on paper.

As all of the evidence submitted on the DVD submitted by the tenant, with the exception of the video recordings could have been readily reproduced on paper I find the tenant had failed to submit evidence that complied with Rule of Procedure #11.8 and would therefore likely have been disallowed in the hearing.

In addition, as much of the description of the evidence the tenants want submitted included substantial evidence for events in the tenancy that occurred after the May 30, 2013 hearing and each subsequent hearing was based on that original Application I find that any evidence the tenant submitted that related to events after May 30, 2013 would not have been considered unless it was specifically ordered to be submitted by any one of the Arbitrators.

I also note that these parties had been had been through three hearings on the same matters since May 2013 and that 2nd and 3rd hearings resulted from Review Considerations granting new hearings and the 4th hearing was an adjournment. As such, I find that all evidence to be considered should have been submitted to the respondent and the Residential Tenancy Branch prior to the 3rd hearing on October 22, 2013.

For these reasons, I find that while some of the evidence submitted in their Application for Review Consideration may be considered new (evidence of events after May 30, 2013) it is not relevant to the Application for Dispute Resolution as it relates to events after the initial Application and hearing.

I also find that the evidence submitted on DVD that was relevant (i.e. evidence submitted that related to events prior to May 30, 2013) it cannot be considered new evidence because it was all available to the tenants prior to the May 30, 2013 hearing and therefore should have been submitted to the original hearing; the 2nd hearing; and the 3rd hearing and yet the tenants chose to submit it with less than 5 days prior to the 4th hearing.

I find the tenants have failed to establish that they have new and relevant evidence that was unavailable for submission prior to the 3rd hearing.

The tenants also submit that the landlord committed fraud in obtaining the decisions. The tenants submit that the landlord committed an “act of perjury” when he testified that he had not received the Arbitrator’s previous decision. The tenants offer no evidence to support his claim of perjury.

The tenants also submit that the landlord testified, under oath, that all emergency and non-emergency repairs to the tenants’ unit and laundry room had been “conducted” and that he did so without any proof except for his oral testimony. The tenant provides no evidence, in his Application for Review Consideration that these repairs were or were not completed.

The tenants submit that the landlord’s witness also committed perjury when he stated that he didn’t make any noise disturbances and that their evidence confirms the disturbances.

From their submissions I find that the tenants are merely attempting to reargue their claims against the landlord. I find the tenants' submission only is a resubmission of their arguments that Arbitrator RW found failed to support the tenants' claims. It is not sufficient to say someone lied or committed perjury after the hearing, but rather the hearing was the tenants' opportunity to question the veracity of the landlord's evidence and testimony.

I note that Arbitrator RW also found that the tenants' claim failed to be supported by their own evidence and that it was the tenants who failed to meet the required burden of proof. From her decision I find Arbitrator RW relied very little on the landlord's testimony or evidence.

For the reasons noted above, I find the tenants have failed to establish that the decisions of October 29, 2013 and December 23, 2013 were obtained by fraud.

Decision

As per the above, I dismiss the tenants' Application for Review Consideration.

The decisions made on October 29, 2013 and December 23, 2013 stand.

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: February 03, 2014