



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: mndc o olc

Introduction

On January 8, 2014 Arbitrator XXXX provided a decision on the tenant's Application for Dispute Resolution seeking to compensation. The hearing had been conducted on December 17, 2013 and January 7, 2014. That decision dismissed the tenant's claim in full. The tenant did not request an extension of time to apply 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.

The tenant submits in her Application for Review Consideration that that she has new and relevant evidence that was not available at the time of the original hearing and she has evidence that the director's decision was obtained by fraud.

Issues

It must first be determined if the tenant has submitted her Application for Review Consideration within the legislated time frames required for reviews.

If the tenant has submitted her Application within the required time frames it must be decided whether she is entitled to have the decision of January 8, 2014 suspended with a new hearing granted because she has provided sufficient evidence to establish that she has new and relevant evidence that was not available at the time of the original hearing or she has evidence the landlord obtained the decision based on fraud.

Facts and Analysis

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 15 days after a copy of the decision is received by the party, if the decision does not relate to a matter of possession of the

rental unit; a notice to end tenancy; withholding consent to sublet; repairs or maintenance or services and facilities.

From the decision of January 8, 2014 the issues before the Arbitrator were related to the tenant's claim for compensation for an insect bite. As such, I find the decision and order the tenant is requesting a review on allowed 15 days to file her Application for Review Consideration.

From the tenant's submission she received the January 8, 2014 decision on January 15, 2014 and filed her Application for Review Consideration with the Residential Tenancy Branch on January 23, 2014 (15 days after receipt of the decision and order). I find the tenant has filed her Application for Review Consideration within the required timelines.

While the tenant has only applied under grounds 2 and 3 she has replied to all three sections of the Application for Review Consideration. I have considered all of the relevant information contained her Application.

In response to the Application the tenant submits that on the date of the reconvened hearing she was not well as she had been sleep deprived and as such she didn't call her witnesses to prepare them to be called into the hearing.

The tenant did not indicate why she had not contacted her witnesses prior to the day of the reconvened hearing, particularly since all three witnesses had been called into the hearing at the original hearing and refused to participate. As all three of her witnesses had either been unavailable or refused to participate in the December 17, 2013 hearing I would have expected the landlord to contact those witnesses at any time between the two hearing dates.

While she states she was sick on January 7, 2014 and that this prevented her from calling her witnesses on January 6, 2014, she does not explain how an illness she suffered from on one day impacted her ability to do something the day before she was not feeling well. Regardless, the ground that the tenant was not able to attend the hearing is not extended to her witnesses, particularly as they were unavailable due to the tenant's failure to prepare them for the hearing.

In response to the question of listing each item of new and relevant evidence and to state why it was not available at the time of the hearing the tenant submits that landlord had lied and submits that she received emails date January 13 and 14, 2014 (after the hearing).

The emails submit start with an email from the tenant on January 13, 2014 stating that she wanted to report that the bucket was missing from the front door and a response from the Housing Service Manager on January 14, 2014 confirming he had received the email and that they would seek a replacement bucket.

The tenant cannot rely on evidence that the landlord has received reports of the missing bucket that she has made after the hearing to discredit any statements that previous to hearing the landlord had not received any complaints. I find the tenant has failed to establish that she has any new or relevant evidence.

In regard to the allegation of fraud the tenant submits that the landlord was inconsistent with his answers regarding the surveillance cameras and that he lied about tenants removing the bucket in question and as to the content of the bucket. The tenant submits that the landlord has lied in his testimony because he city lawyers have told him to do so; and so that he can keep his job.

It is not sufficient to submit that a party believes that another party has lied or committed fraud. It is also no sufficient to submit assumptions about the content or conduct of parties to a dispute resolution hearing. In failing to provide any evidence to substantiate her claim that the landlord committed fraud, I find the tenant is simply attempting to reargue her claim. I find the tenant has failed to provide sufficient evidence to establish the decision was obtained by fraud.

Decision

For the reasons noted above, I dismiss this Application for Review Consideration. The decision made on January 8, 2014 stands.

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