



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: FF MNDC MNSD

Introduction

On January 22, 2014 Arbitrator XXXXX provided a decision on the tenants' Application for Dispute Resolution seeking return of double the amount of the security deposit and pet damage deposit. The hearing had been conducted on January 16, 2014.

That decision granted the tenants a monetary order for return of double the amount of the deposit. The landlords 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 landlords have applied for Review Consideration on the ground that they have new and relevant evidence that was not available at the time of the original hearing.

Despite applying under only one ground the landlords submit in their Application for Review Consideration that the male landlord was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond his control; 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 landlords have submitted their Application for Review Consideration within the legislated time frames required for reviews.

If the landlords have submitted their Application within the required time frames it must be decided whether the landlords are entitled to have the decision and order of January 22, 2014 suspended with a new hearing granted because they have provided sufficient evidence to establish that they were unable to attend the hearing for unexpected reasons that were beyond their control; they have new and relevant evidence that was not available at the time of the original hearing; or they have evidence the tenants 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 or order 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 22, 2014 the issues before the Arbitrator were related to the tenants' claim to have the security deposit returned after the end of the tenancy. As such, I find the decision and order the landlords are requesting a review on allowed 15 days to file their Application for Review Consideration.

From the landlords' submission they received the January 22, 2014 decision and order on January 28, 2014 and filed their Application for Review Consideration with the Residential Tenancy Branch on January 31, 2014 (2 days after receipt of the decision and order). I find the landlords have filed their Application for Review Consideration within the required timelines.

The landlords submit that the male tenant was not able to attend the hearing because both his wife and he could not both be away from their store at the same time. The male landlord submits that he was working with a customer at the time of the hearing.

To be granted a new hearing under this ground a party must not be able to attend or be represented at the hearing. From the original decision of January 22, 2014 the female landlord attended the hearing. As such, I find the landlords were represented at the hearing and are not entitled to a new hearing on this ground.

Further, the reason for not being able to attend the hearing must be unexpected and outside of the control of the party. As the reason submitted by the male landlord was that he had to stay in the store could well be anticipated and was within his control I again find the landlord cannot rely on this ground to be granted a new hearing.

The landlords submit that they have new and relevant evidence that was not available at the time of the original hearing. The landlords have submitted letters obtained from a cleaning person; their garbage hauler; a local hardware store; and copies of the conditions and terms of the tenancy.

The landlords submit that they did not provide the letters at the original hearing because they did not know the tenants were going to dispute the condition of the rental unit at the start of the tenancy or that the tenants were going to purport that the vanity countertop could be replaced without the need to replace the entire vanity.

The original hearing is the landlords' opportunity to present all relevant evidence and to anticipate what the tenants would put forward as testimony and evidence and prepare for it. The Review Consideration process is not intended to provide a second opportunity to respond to testimony raised in the hearing.

The landlords submit that the conditions and terms of the tenancy agreement were in his package but somehow they were not sent to the tenants or to the Residential Tenancy Branch in their packages. I find failure to provide a document to the parties prior to the original hearing does not constitute the evidence being new.

For these reasons I find the landlord has failed to establish that they have any new evidence.

Even if I were to consider the evidence submitted by the landlord to be new evidence I find that the evidence submitted is not relevant to a tenant's Application for Dispute Resolution seeking return of a security deposit.

Such an Application is related solely to whether or not a landlord has fulfilled their obligations at the end of a tenancy to return the security and pet damage deposits or claim against the deposit within 15 days of the end of the tenancy and receipt of the tenant's forwarding address.

As the evidence submitted by the landlord relates to the condition of the rental unit and or damage and does not speak at all to when the tenancy ended; when the landlord received the tenants' forwarding address; or when the landlord returned the security and

pet damage deposits or filed an Application to claim against them, the evidence cannot be relevant to the matter before the Arbitrator.

A decision on a tenant's Application for Dispute Resolution seeking return of their deposits does or should not consider any damages suffered by the landlords unless the tenants have specifically agreed, in writing, to a specific amount of money that the landlord may withhold. I note from the decision that the Arbitrator found that the tenants had not signed any such agreement allowing the landlord to deduct any amounts.

If a landlord wants to claim losses or damages that result from a tenancy they must file their own Application for Dispute Resolution seeking a monetary order and in cases where the security deposit has not been returned or ordered to be returned seeking to retain the deposits.

As to fraud the landlords submit that the tenants raised the issue that the rental unit had previously been a marijuana grow operation and that raising the issue was fraudulent. However, the landlords confirm, in their Application for Review Consideration that this had occurred but 18 months prior to the start of the tenancy and that the entire unit had been renovated.

Fraud is defined as the intentional use of false information to obtain a desired outcome. I find that if the events occurred, as is confirmed by the landlords' submission that they did, the fact the tenants raised the issue does not constitute obtaining the decision by fraud.

The landlords also submit that the tenants "willfully lied about the construction garbage in the garage and that there was none of there stuff in it." However, the proposition that a party lied is insufficient to establish that they did. The party making the allegation must provide evidence to support their assertion of the lies or fraudulent testimony and evidence.

The landlords submit that the "Arbitrator only awarded partial payment on the cleaning and nothing for all of the dog feces and garbage left on the premises because the tenant had said that there was a large amount of construction garbage.

As noted above a hearing conducted to adjudicate a tenant's Application seeking return of security or pet damage deposits does not consider granting awards to a landlord but rather if the landlord has a claim against the tenants for losses or damages they may file their own Application for compensation.

Decision

For the above not reasons, I dismiss the landlords' Application for Review Consideration.

The decision made on January 22, 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 05, 2014