



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

On October 28, 2014 Arbitrator J. Hendrick provided a decision on the tenant's Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause. The hearing had been conducted on October 28, 2014.

That decision dismissed the tenant's Application and found the notice to end tenancy to be of force and effect. The tenant requested 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 his Application for Review Consideration that he was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond his control; that he has new and relevant evidence that was not available at the time of the original hearing; and he has evidence that the director's decision was obtained by fraud.

Issues

It must first be determined if the tenant has submitted his Application for Review Consideration within the legislated time frames required for reviews or is entitled to an extension of time to submit his Application for Review Consideration.

If the tenant has submitted his Application within the required time frames or is entitled to an extension it must be decided whether he is entitled to have the decision and order of October 28, 2014 suspended with a new hearing granted because he has provided sufficient evidence to establish that he was unable to attend the hearing for unexpected reasons that were beyond his control; he has new and relevant evidence that was not available at the time of the original hearing; or he 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 5 days after a copy of the decision or order is received by the party, if the decision relates to a notice to end tenancy for a reason other than the non-payment of rent; repairs or maintenance; or services or facilities.

From the decision of October 28, 2014 the issues before the Arbitrator were related to the landlord's notice to end tenancy for cause. As such, I find the decision the tenant is requesting a review on allowed 5 days to file their Application for Review Consideration.

From the tenant's submission he received the October 28, 2014 decision on October 31, 2014 and filed his Application for Review Consideration with the Residential Tenancy Branch on November 4, 2014 (4 days after receipt of the decision). I find the tenant has filed his Application for Review Consideration within the required timelines.

Therefore, I find the tenant does not require additional time to submit his Application for Review Consideration.

Under the ground of unable to attend the tenant submits that he was asked to leave the office during the arbitration hearing and before he could answer any questions. He submits that had he been able to continue attending he would have provided testimony and/or additional evidence regarding RCMP files and hospital admissions forms.

Under the ground of new and relevant evidence he indicates that "I was kicked out of the office before my defence was heard and the hearing was finished without me." He does not indicate what item of evidence was new; its relevance; or why it was not available at the time of the original hearing.

Under the section on fraud the tenant submits that all of the landlord's testimony and evidence "is lies". He goes on to state that he is being accused of things he did not do and that he was told to leave the hearing room. He states that he was at the local "Citizen's Advocacy Centre and he was not present to defend himself.

The decision dated October 28, 2014 states that the hearing was conducted by conference call and it does not state that the tenant left the hearing at any time prior to the end of the hearing. In fact, the Arbitrator makes comments specifically about nearing the end of the hearing or at the conclusion of the hearing and her interactions with the tenant.

Further, the decision clearly outlines the tenant's responses to the landlord's testimony and evidence. For these reasons I find the tenant attended the entire hearing and was not excluded or prevented from providing any evidence or testimony sufficient in support of his version of events.

In addition, even if the tenant had been required to leave the room that he was using for his participation in the hearing by conference call the onus was on the tenant to make his own suitable arrangements to participate in the call and as such these actions were completely within his control.

In relation to the ground of new and relevant evidence I find the tenant has provided no evidence in his Application for Review Consideration and as such I find he has provide no new or relevant evidence sufficient to be a ground to grant a new hearing.

Finally, in relation to the tenant's claim of fraud, while the tenant insists that all the landlord's evidence and testimony was lies he has provide no evidence to substantiate his claim. It is simply not sufficient to state that the landlord was lying the tenant must have provided some evidence to support the claim.

As such, I find the tenant has failed to provide sufficient evidence to establish any ground to be granted a new hearing.

Decision

For the above noted reasons I dismiss the tenant's Application for Review Consideration.

The decision made on October 28, 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: November 06, 2014

Residential Tenancy Branch