



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

On October 27, 2014 Arbitrator J. Hendrick provided a decision on the landlords' Application for Dispute Resolution seeking an order of possession and a monetary order. The Application was adjudicated through the Direct Request process.

That decision granted the landlords an order of possession and a monetary order in the amount of \$2,600.00. The tenants 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 tenants submit in their Application for Review Consideration that they have evidence that the director's decision was obtained by fraud.

Issues

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

If the tenants submitted their Application within the required time frames it must be decided whether the tenants are entitled to have the order of October 27, 2014 suspended with a new hearing granted because they have provided sufficient evidence to establish that they have evidence the landlords 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 2 days after a copy of the decision or order is received by the party, if the decision relates to a landlord's notice to end tenancy for unpaid.

From the decision of October 27, 2014 the issues before the Arbitrator were related to the landlords' notice to end tenancy for non-payment of rent. As such, I find the decision and order the tenants are requesting a review on allowed 2 days to file their Application for Review Consideration.

From the tenants' submission they received the October 27, 2014 order on November 4, 2014 and filed their Application for Review Consideration with the Residential Tenancy Branch on November 6, 2014 (2 days after receipt of the decision and order). I find the tenants have filed their Application for Review Consideration within the required timelines.

The tenants submit that they have a hearing set for December 8, 2014 and that the landlords were served. The tenants do not indicate when they applied for Dispute Resolution; what the issues are in the hearing of December 8, 2014; or how and when they served the landlords with notice of the hearing for December 8, 2014.

Audit notes on the tenant's file (File #827224) indicate the file was created on October 17, 2014 and that on October 20, 2014 and on October 24, 2014 the tenants were provided with instructions by email to correct a number of problems with their Application, including a correction to the dispute address. There is no record that the tenants submitted the corrections requested, however on October 29, 2014 the hearing was scheduled for December 8, 2014 and the tenants were provided with an email with all relevant documents and printing instructions.

The audit notes go on to say that on November 3, 2014 the tenants contacted the Residential Tenancy Branch stating there was confusion about the notice of hearing documents and that they were unable to attend the Service BC office over the weekend. They continue indicating the tenants were provided printing instructions for the notice of hearing documents to enable him to serve them that date.

Audit notes from the landlords' file (539945) show that the landlords submitted their Application for Direct Request on October 21, 2014. The remaining details of when the landlords served the tenants are outlined in the decision of October 27, 2014 in response to the landlord's Application.

Based on the above, I find that the earliest the tenants could have served the landlord with their notice of hearing documents was October 30, 2014 as that was when the documents were sent by email to the tenants. However, from the audit notes it appears the tenants did not serve the landlord until at least November 3, 2014. Both of these dates are well after the landlord applied for Direct Request and even after the decision of October 27, 2014 was rendered.

As such, I find the landlord had never been made aware that the tenants had submitted an Application to dispute the 10 Day Notice until after the decision to grant the landlord an order of possession was made. Therefore, I find the landlords did not commit any form of fraud by applying for and obtaining an order of possession through the Direct Request process.

The tenants submit that they had offered to pay the landlord the outstanding rent; that the landlords were fully aware of this offer and that they rejected it. As evidence of this the tenants submitted an audio recording, however the audio recording provides no context or information as to when the recording was made.

As a result, I cannot determine if this was a conversation that was held between the parties prior to the 5 day deadline after receiving the 10 Day Notice to End Tenancy for Unpaid Rent in which case the notice may have been invalidated or if the discussion occurred after that deadline which would have had no effect on the Notice, leaving it to be enforceable.

In the absence of this context I find the tenants have failed to provide sufficient evidence to establish that the landlords obtained the decision by fraud.

Decision

Based on the above, I dismiss the tenants' Application for Review Consideration.

The decision made on October 27, 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 13, 2014

Residential Tenancy Branch