



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Introduction

On November 24, 2014 an arbitrator provided a decision on the landlord's Application for Direct Request seeking to an order of possession. The application was adjudicated through the Direct Request process and a participatory hearing was not conducted.

That decision granted the landlord an order of possession. 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 his Application for Review Consideration that 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.

If the tenant has submitted his Application within the required time frames it must be decided whether he is entitled to have the decision and order of November 24, 2014 suspended with a new hearing granted because he has provided sufficient evidence to establish that 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 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 the non-payment of rent.

From the decision of November 24, 2014 the issues before the arbitrator were related to a landlord's 10 Day Notice to End Tenancy for Unpaid Rent. As such, I find the decision and order the tenant is requesting a review on allowed 2 days to file his Application for Review Consideration.

From the tenant's submission he received the November 24, 2014 decision on December 9, 2014 and filed his Application for Review Consideration with the Residential Tenancy Branch on December 10, 2014 (1 day after receipt of the decision). I find the tenant has filed his Application for Review Consideration within the required timelines.

The tenant submits the "date of service for 10 Day Notice to End Tenancy was received by me on Oct 8/2014, not Oct 5/2014 as stated by landlord. Rent was paid by me on Oct 12/2014 not Oct 15/2014 as stated by landlord." [reproduced as written]

The decision of November 24, 2014 states that "The landlord submitted a copy of the Notice to End Tenancy for Unpaid Rent and a 'Proof of Service' form stating that the Notice was served to the tenant in person on October 5, 2014 in front of a witness." The Proof of Service document is signed by the landlord's witness confirming that she saw the landlord serve the Notice to End Tenancy to the tenant personally on October 5, 2014 at 9:30 a.m.

The tenant has provided no evidence support his statement that he was served the Notice to End Tenancy on October 8, 2014 or any evidence to refute the landlord's submission that this service was witnessed on October 5, 2014.

The decision also notes that the landlord submitted that the tenant paid all of the arrears owed on October 15, 2014. The tenant has provided no evidence, such as a cancelled cheque or rent receipt with his Application for Review Consideration.

In applying for Review Consideration on the basis of fraud the party must submit evidence to corroborate their claims of evidence. It is not sufficient to simply make statements about the validity of the other party's evidence and/or testimony.

In the case before me, I find the tenant has provided no evidence to support his claims. For example, on the date of service of the Notice to End Tenancy the landlord provided a signed witness statement confirming the date of service and the tenant has provided absolutely no evidence that would contradict that evidence.

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

Decision

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

The decision made on November 24, 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: December 12, 2014