



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding 1763396 ALBERTA LTD
and [tenant name suppressed to protect privacy]

REVIEW DECISION

Dispute Codes OPR, MNR

Introduction

On December 7, 2016, the Landlord's agent made an Application for Direct Request (the "Application") for an Order of Possession and a Monetary Order for unpaid rent against two Tenants. The Direct Request process is a non participatory hearing and enables an Arbitrator/Adjudicator to make a decision based on documentary evidence alone which the Landlord is required to submit with the Application.

On December 13, 2016, the Adjudicator having conduct of the Application examined the Landlord's documentary evidence and made a finding that the Landlord was entitled to an Order of Possession and a Monetary Order for unpaid rent in the amount of \$2,100.00 for October and November 2016 unpaid rent. That Decision and the orders dated December 13, 2016 were made only against one of the Tenants.

However, one of the Tenants made an Application for Review Consideration (the "Review Application") on January 6, 2017 for a review of the December 13, 2016 orders. The review consideration was conducted by me on January 10, 2017. In that Review Consideration Decision, I determined that the Tenant had provided sufficient evidence that the December 13, 2016 orders may have been obtained by a previous agent of the Landlord using fraud. This was based on a signed letter completed by the Landlord admitting to fraud by the Landlord's agent. However, the authenticity of that letter was scheduled to be determined and verified by me in this Review Hearing.

As a result, I issued the parties the Review Consideration Decision dated January 10, 2017 which detailed my reasoning for this Review Hearing and suspended the December 13, 2016 Decision and orders pursuant to Section 81(3) of the *Residential Tenancy Act* (the "Act"). That Review Consideration Decision should be read in conjunction with this Review Hearing Decision.

The Tenants and their legal counsel appeared for this review hearing.

However, there was no appearance for the Landlord. The female Tenant testified that she had served the Landlord with the Notice of Hearing documents for this review hearing and a copy of the Review Consideration Decision by registered mail on January 19, 2017. The female Tenant testified that the documents were sent to the registered address of the company Landlord and the Canada Post website shows that it was received and signed for on January 23, 2017.

Legal counsel for the Tenants explained that she had received an email from the Landlord's legal counsel. In that email the Landlord confirmed notice of this review hearing but due to other commitments, he was unable to appear and that his absence indicated that the company Landlord had no issues with the Decision and orders of December 13, 2016 being set aside as the tenancy was continuing.

The female Tenant testified to the authenticity of the signed letter authored by the Landlord which was provided with the Review Application. Legal counsel confirmed the Landlord's agreement that the Decision and orders were obtained by fraud. I also note that in my Review Consideration Decision, I explained that a failure of the Landlord to appear for this hearing would result in the Decision and Orders being set aside.

Based on the foregoing evidence, I accept the Landlord was notified and made aware of this review hearing pursuant to Section 81(4) of the Act, and I accept that he was unable to appear for it. I accept the evidence before me that the Landlord concurs with the written letter provided by the Tenants with the Review Application which explains the Decision and orders of December 13, 2016 were obtained by fraud and the Landlord no longer relies on them as the tenancy is continuing.

Accordingly, it is my decision that pursuant to Section 82(3) of the Act, the Decision, the Order of Possession, and the Monetary Order dated December 13, 2016 are to be now set aside. The tenancy will continue until it is ended pursuant to the Act. This Review Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 27, 2017

Residential Tenancy Branch