



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, LRE, FFT (Tenants)
OPR-DR, MNR-DR, FFL (Landlord)

Introduction

This was a review hearing. A Review Consideration Decision was issued February 21, 2023, and should be read with this Decision.

G.L. appeared at the hearing for the Landlord with Legal Counsel. P.G. appeared at the hearing for the Tenants. G.L. and P.G. provided affirmed testimony.

The Landlord provided the Review Consideration Application and evidence. The Tenants did not provide documentary evidence for the review hearing. P.G. confirmed receipt of the Landlord's materials by email. P.G. agreed the email was sent February 28, 2023, and said it was received March 04, 2023.

During the hearing, P.G. exited the conference call without warning and had telephone issues. I proceeded with the hearing. P.G. had phone issues at the first hearing and should have known they had to call into these telephone conferences on a reliable line. In general, parties are expected to ensure they call into these hearings on reliable phone lines.

Adjournment

P.G. asked for an adjournment of the review hearing. P.G. said they did not receive notice of the hearing until March 04, 2023, and were not able to prepare in time. P.G. said they only had one day to prepare given the deadlines in the Review Consideration Decision. P.G. said they did not get an upload code for the Tenants for the review

hearing so they could not submit evidence. P.G. said the Tenants did not appear for the review hearing because G.L. has been harassing Tenant D.G.

G.L. and Legal Counsel did not agree to an adjournment.

I considered rule 7.9 of the Rules of Procedure and denied the adjournment for the following reasons.

The Tenants submitted no evidence to support the stated reasons for needing an adjournment. The Tenants submitted no evidence to show they took any steps to prepare for the review hearing.

In relation to the upload code, the Tenants simply had to call the RTB to get this or to submit evidence in another way. RTB notes do not show that the Tenants contacted the RTB about an upload code. Further, the absence of an upload code did not stop the Tenants from serving evidence on the Landlord.

The Review Consideration Decision states:

The **Landlord must serve all of their evidence** they want considered at the review hearing about the limited issue outlined above on the Tenants by email at the email address noted on the front page of this Review Decision **by February 28, 2023.**

The **Tenants must serve all of their evidence** they want considered at the review hearing about the limited issue outlined above on the Landlord by email at the email address noted on the front page of this Review Decision **by March 07, 2023.**

The Tenants had four days, from March 04 to March 07, 2023, to take some steps to obtain and serve evidence on the Landlord. There is no evidence before me that the Tenants took any steps. The Tenants had 10 days to contact the RTB for an upload code and submit compelling evidence to support an adjournment request. The Tenants did not provide any compelling evidence to support the adjournment request.

The Tenants provided no compelling basis to allow an adjournment. Review hearings are an extraordinary step and should occur within a short period of time.

After I denied an adjournment, P.G. submitted it would be prejudicial to proceed because the Tenants have made professional complaints against G.L. and Legal Counsel based on their professional status as a realtor and lawyer.

I did not accept that it was prejudicial to proceed with the review hearing. This Decision is based on my findings of reliability and credibility given the documentary evidence provided. I do not place more weight on the testimony or submissions of G.L. or Legal Counsel because they are a realtor and lawyer. The professional status of G.L. and Legal Counsel has no impact on my Decision.

Issues to be Decided

1. Has the Landlord proven the Tenants committed fraud in the original hearings to obtain the original Decision and Order?
2. If the Landlord has proven fraud, should the original Decision and Order be confirmed, varied or set aside?

Background and Evidence

I stated in the Review Consideration Decision:

Based on the cash receipt provided by the Tenants, emails between P.G. (agent for the Tenants) and G.L. (agent for the Landlord), photo of the Landlord's receipt book and photo of the Landlord's cash receipts from July 06, 2022, to September 19, 2022, I find a review hearing on the issue of fraud is justified and is granted...

The review hearing will be about the limited issue of whether P.G. and/or the Tenants provided fraudulent documentary evidence (the cash receipt) and testimony in relation to the Tenants, or someone for the Tenants, paying the Landlord, or an agent for the Landlord, \$12,850.00 in cash on August 22, 2022, for rent for the rental unit.

Legal Counsel reiterated the Landlord's position that the Tenants did not pay the Landlord \$12,850.00 in cash on August 22, 2022. Legal Counsel reviewed the documentary evidence relied on by the Landlord including bank statements, emails between G.L. and P.G., the Landlord's cash receipt book and the Landlord's cash receipts. Legal Counsel pointed to the email communications between G.L. and P.G.

where they talked about unpaid rent and submitted that P.G. would have told G.L. about the rent payment made August 22, 2022, in the emails if this payment had actually been made.

P.G. provided testimony and submissions including the following relevant points. D.L., an old family friend, gave \$12,850.00 in cash to the agent for the Landlord who did the Condition Inspection Report. P.G. only knows the cash payment was made because Tenant D.G. told P.G. this, P.G. has not talked to D.L. about the cash payment. Nobody was with D.L. at the time, but P.G. thinks there is a recording of the interaction. D.L. is in the hospital with COVID and will not be available for three months. Tenant D.G., P.G.'s wife, took the \$12,850.00 out of their bank account and gave it to D.L. to pay the Landlord. P.G. did not know D.G. had given D.L. the \$12,850.00 because D.G. did not tell P.G. this for a period of time. P.G. did not know the \$12,850.00 cash payment had been made when they sent emails to G.L. about unpaid rent.

In reply, G.L. testified that they are the person who did the Condition Inspection Report.

Analysis

1. Has the Landlord proven the Tenants committed fraud in the original hearings to obtain the original Decision and Order?

RTB Policy Guideline 24 explains review considerations and the ground of fraud. Section 79(2)(c) of the *Act* allows for review based on fraud.

The Landlord has proven fraud on a balance of probabilities as required.

The Landlord provided photos of their receipt book for the relevant time period. The Landlord's receipts are different than the cash receipt provided by the Tenants. The Landlord provided photos of their cash receipts from July 06, 2022, to September 19, 2022, showing there is no cash receipt for \$12,850.00 paid August 22, 2022. The Landlord provided emails from P.G. dated September 08, 12, 15 and 19, 2022, both stating and implying that P.G. will pay G.L. the \$12,850.00 owing.

Based on the Landlord's evidence, I find it more likely than not that the Tenants did not pay the Landlord \$12,850.00 in cash on August 22, 2022. It is unlikely P.G. would state or imply that they will pay G.L. \$12,850.00 owing in their emails sent September 08, 12, 15 and 19, 2022, if the cash payment was made August 22, 2022, such that there was

no money owing. It is unlikely Tenant D.G. gave \$12,850.00 to D.L. to pay the Landlord and did not tell P.G., particularly given it was P.G. who was communicating with G.L. about unpaid rent. It is particularly unlikely Tenant D.G. did not tell P.G. about the \$12,850.00 paid when the emails between P.G. and G.L. got to the point where G.L. said they would report the issue to police. P.G. was still talking about getting G.L. the money owing on September 19, 2022, almost one month after the alleged August 22, 2022 payment. It is unlikely Tenant D.G. would not have told P.G. about the \$12,850.00 payment for almost a month, at least.

The Landlord has proven the original Decision and Order should be reviewed based on fraud by the Tenants, the fraudulent evidence being the cash receipt provided for the original hearing and the testimony of P.G. that \$12,850.00 in cash was paid to the Landlord August 22, 2022.

2. If the Landlord has proven fraud, should the original Decision and Order be confirmed, varied or set aside?

The original Decision stated:

I accept that the Tenants owe the Landlord \$20,000.00 in unpaid rent as of today's date because P.G. acknowledged the Tenants have not paid any rent since October 2022. I read the six reasons the Tenants could have withheld rent out during the hearing and P.G. did not point to any authority under the Act for the Tenants to have withheld rent since October of 2022.

Based on the cash receipt in evidence, I accept the Tenants paid \$10,000.00 in rent August 22, 2022. I acknowledge the receipt is for \$12,850.00; however, it is clear from the materials the amount over \$10,000.00 relates to other fees. I have reviewed all of the Landlord's evidence and none of it contradicts the cash receipt. For me to accept that the Tenants did not pay \$10,000.00 in rent, I would have to find the Tenants have committed fraud by creating and signing the receipt themselves. There is simply insufficient evidence before me to find that this is the case.

Given the above, I find the Tenants owe the Landlord \$20,000.00 in unpaid rent for October of 2022 to January of 2023. I issue the Landlord a Monetary Order in this amount.

Given my findings above, I find it is more likely than not that the Tenants did not pay the Landlord \$12,850.00 on August 22, 2022. Therefore, the Tenants still owe the Landlord \$10,000.00 in unpaid rent. The above paragraphs of the original Decision are varied. I find the Tenants owe the Landlord \$10,000.00 in unpaid rent over and above the \$20,000.00 awarded in the original Decision and Order. This Decision varies the original Decision. The Landlord is issued an additional Monetary Order for \$10,000.00. The original Monetary Order for \$20,000.00 is confirmed and remains valid.

Conclusion

The Landlord is issued an additional Monetary Order for \$10,000.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This 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: April 13, 2023

Residential Tenancy Branch