

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC CNL FF LAT LRE MNDC MNR MT O

Introduction

This is an application by the landlords for a review of a decision rendered by a Dispute Resolution Officer (DRO) on September 30, 2011, with respect to an application for dispute resolution from the tenant.

A DRO may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- the application does not disclose sufficient evidence of a ground for review;
- the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the DRO should be set aside or varied.

Issues

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.

In this case, the applicants sought a review of the original decision because they maintained it was obtained by fraud, the third of the grounds cited above.

Facts and Analysis

This ground applies where a party has evidence that the DRO's decision was obtained by fraud. Fraud is the intentional "false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive." Intentionally false testimony would constitute fraud, as would making changes to a document either to add false information, or to remove information that would tend to disprove one's

case. Fraud may arise where a witness has deliberately misled the DRO by the concealment of a material matter that is not known by the other party beforehand and is only discovered afterwards.

Granting a review on this ground applies where a party has evidence that the DRO's decision was obtained by fraud. It is not enough to allege that the opposing party made false statements at the hearing, which were met by a counter-statement by the other party, and the whole evidence adjudicated upon by the DRO. Fraud must be intended. A negligent act or omission is not fraudulent. A review hearing will likely not be granted where a DRO prefers the evidence of the other side over the evidence of the party applying.

A party who is applying for review on the basis that the DRO's decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the DRO, and that that evidence was a significant factor in the making of the decision. The party alleging fraud must prove new and material facts, or newly discovered and material facts, which were not known to the applicant at the time of the hearing, and which were not before the DRO, from which the DRO conducting the review can reasonably conclude that the new evidence, standing alone and unexplained, would support the allegation that the decision or order was obtained by fraud. The burden of proving this issue is on the person applying for the review. If the DRO finds that the applicant has met this burden, then the review will be granted.

The evidence to support claims made in an application for review must be attached to the application. In this application, the evidence submitted in support of the application for review is a three-page summary of the landlords' claim and copies of documents that were entered into written evidence prior to the hearing.

The Application for Review requires the applicant to identify "Which information submitted for the initial hearing was false and what information would have been true?" The landlords responded as follows:

In the tenants evidence (document 2, point 5), the tenant stated that the landlord was in her home 6 times between June 1 to June 8, 2011.

The landlords evidence shows that they were in the residential premises on June 2, 3, and 6, 2011. To do an inspection (June 2), make an emergency repair (June 3), and to do requested repairs (June 6).

The Application for Review also asks the applicant to explain "How did the person who submitted the information know it was false?" The applicants responded as follows:

The tenant knows that the landlord entered for these reasons with proper notice and consent, which was not in the amount of 6 times between June 1 to June 8, 2011.

The Application for Review also asks the question “How do you think the false information was used to get the desired outcome?” The applicants answered as follows:

By the tenant giving false accounts of entry, she made it look as though we were disturbing her quiet enjoyment and harassing her. The DRO’s decision was based on harassing behaviour starting in June 2011. It could be understood that this was the information used for the basis of her decision.

Throughout the remainder of the landlords’ application for review, the landlords provided similar information referring to specific evidence that they submitted before the hearing which they believed was more credible than the tenant’s written evidence.

In considering the landlords’ application, I first note that key portions of the copy of the tenant’s evidence referred to as Document 2, Point 5 submitted as an attachment in the landlords’ application for review were illegible for the most part. However, as the documents attached to the landlords’ application for review were all entered into written evidence at the original hearing, I have checked the original Document 2, Point 5 reviewed by the DRO and was able to read the sections of that Document that were illegible in the copy attached to the landlords’ application for review.

I find with very few exceptions that the landlords’ claim of fraud is based on the landlords’ assertion that the tenant’s written evidence was fraudulent and the landlords’ written evidence was truthful. All of these documents were before the DRO when she weighed the evidence before her and made her decision. As noted above, a successful application for review on the basis of fraud must demonstrate more than a claim that the written evidence submitted by the opposing party contained false statements. The landlords had a full opportunity at this reconvened hearing of September 26, 2011 to raise any concerns that they had regarding the tenant’s written evidence and, in particular, the number of times that the landlord accessed the rental unit between June 1 and June 8, 2011. Considerable detail was provided in the DRO’s decision on the number of landlord visits that occurred and the purposes of those visits.

The review process does not provide a new opportunity to reargue points that were made at the hearing but which were not given the weight that a party would have preferred in the DRO’s decision. Neither the information now submitted, nor the landlords’ awareness of the issues appears to have changed since the September 30,

2011 decision was issued. The landlords' submission on this application for review appears to be an attempt to re-argue the matters that were before the DRO on the original hearing.

I deny the landlords' application for review on the ground that the original decision was based on fraud. I dismiss the application for review on the basis that the application discloses insufficient evidence of any ground for review. Further, the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the DRO should be set aside or varied.

Decision

The decision made on September 30, 2011 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*.