



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC MNR MNSD

Introduction

On November 03, 2011, a hearing was conducted to resolve a dispute between these two parties. The landlord had applied for a monetary order. The tenant did not attend the hearing. The Dispute Resolution Officer granted the landlord's application. The tenant has applied for a review of this decision.

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 applicant relies on section 79(2) (c) of the *Residential Tenancy Act*, which provides that the director may grant leave for review if a party has evidence that the arbitrator's decision or order was obtained by fraud.

Issues

Does the tenant have evidence that the arbitrator's decision was obtained by fraud?

Facts and Analysis

Decision Obtained by Fraud

This ground applies where a party has evidence that the 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".

Fraud may arise where a witness has deliberately misled the Dispute Resolution Officer by the concealment of a material matter that is not known by the other party beforehand and is only discovered afterwards. Fraud must be intended. A negligent act or omission is not fraudulent.

A party who is applying for review on the basis that the Dispute Resolution Officer's decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the Dispute Resolution Officer, and that that evidence was a significant factor in the making of the decision. The party alleging fraud must allege and 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 Dispute Resolution Officer, and from which the Dispute Resolution Officer 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.

On this ground for review, that the Dispute Resolution Officer's decision was obtained by fraud, the applicant alleges that the landlord committed fraud by testifying about the condition of the carpets and the yard as being poor. The applicant states that the carpets were in bad shape at the start of the tenancy and that the landlord had already been awarded damages for the carpet, at a prior hearing with the previous tenant. In support of her application for review, the applicant has attached letters from "*people who seen my place*", the rental agreement showing existing damage, proof of having paid utilities and a handwritten account of events as they occurred during the tenancy.

The applicant also states that she was not served with the notice of hearing, but has not applied for a review on the grounds of "Unable to attend".

With respect to the matter the tenant asserts is fraudulent, it was not a matter unknown to the tenant at the time of the original hearing. It was in existence and could have been submitted at the original hearing. However the tenant did not attend the hearing and therefore was unable to present her arguments. The tenant may disagree with the Dispute Resolution Officer's findings of fact, but she had an opportunity to respond to the landlord's evidence at the hearing, if she had attended.

The tenant has not provided me with new evidence to support the allegation that the decision under review was obtained by fraud. The evidence filed with the application for review was in existence at the time of the hearing except for the proof of payment of utilities, which was paid after the hearing. The tenant has not proven any new or newly

discovered material facts and how that evidence could have been a significant factor in the making of the decision. The application discloses insufficient evidence that the decision under review was obtained by fraud; and therefore, fails to satisfy the inherent burden of proof.

The *Act* also allows the director to dismiss an application for review if the application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied. The applicants have failed to prove that a fraud was perpetrated and accordingly, I find that the application for review on this ground must fail.

This ground for review is not designed to provide parties a forum in which to rebut findings by the Dispute Resolution Officer or to allege an error of fact or law. The applicants are free to apply for judicial review in the Supreme Court, which is the proper forum for bringing allegations of error.

Decision

The decision made on November 03, 2010 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 02, 2011.

Residential Tenancy Branch