



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC MNR MNSD O

Introduction

The original dispute resolution hearing was held on November 7, 2011 and a decision and order were issued on November 8, 2011.

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.

Issues

Whether or not there is new and relevant evidence that was not available at the time of the hearing, and whether or not the original decision was obtained by fraud.

Facts and Analysis

The application contains information under Reasons Number 2 & 3

The applicant has stated that she was incapacitated due to depression and subsequent over medication and therefore was not able to prepare for the conference call hearing and was unable to present all her evidence because she was not thinking properly and too confused as a result of overdosing on prescription medications.

The applicant is also claiming that the landlord's photos presented at the original hearing were not taken when the landlord claims and therefore the decision was obtained by fraud.

Decision

Reason 2

The applicant claims that she was incapacitated and too confused to present all the evidence required for the original hearing, however it is my finding that she has not met the burden of proving that claim.

The applicant has supplied a letter from her psychiatrist which she feels proves that she was incapacitated however I have read the letter and although it does discuss her mental state at the time it does not say that she was incapacitated or too confused to participate in the hearing.

Therefore I am not willing to grant a new hearing under reason 2.

Reason 3

To prove an allegation of fraud the parties must show that there was a deliberate attempt to subvert justice. 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. The burden of proving this issue is on the person applying for the review. If the Dispute Resolution Officer finds that the applicant has met this burden, then the review will be granted.

In this case is my finding that the applicant had every opportunity to make this argument at the time of the original hearing, and therefore I will not allow a request for a new hearing under reason 3.

Conclusion

The decision and order made on November 8, 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*.

Dated: December 12, 2011.

Residential Tenancy Branch