



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNSD

Introduction

The original hearing for these two files was held on January 24, 2012 and a decision was issued on that same date.

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 original hearing and whether or not the dispute resolution officer's decision was obtained by fraud.

Facts and Analysis

The application contains information under Reasons Number 2 & 3

Reason number 1

The applicant states that she did not receive the landlords evidence package until after the hearing and further states that it would appear that the Dispute Resolution Officer was unaware of the fact that none of the documents relied upon by the landlord during the hearing were in her possession.

The applicant however participated in the original hearing, and therefore I see no reason why she could not have raised the issue with the original Dispute Resolution Officer during the original hearing.

This therefore is not considered new evidence, as it was available at the time of the original hearing and should have been addressed at that time.

Reason number 2

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.

Although the applicant has made numerous allegations of fraud on the part of the landlords she has not provided sufficient evidence to meet the burden of proving that the original decision was obtained by fraud.

Decision

I am not willing to grant a new hearing for these two files through the review process.

The decision made on January 24, 2012 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: March 01, 2012.

Residential Tenancy Branch