



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

APPLICATION for REVIEW

Dispute Codes: FF MND MNR MNSD OPR

Introduction

On March 13, 2012, a hearing was conducted to resolve a dispute between these two parties. The landlord had applied for an order of possession and a monetary order for unpaid rent and the filing fee. The tenant did not attend the hearing. The Dispute Resolution Officer granted the landlord's application. The tenant has filed 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 sections 79(2)(a) and (c) of the *Residential Tenancy Act* (the "Act"). Section 79(2)(a) provides that the director may grant leave for review if a party was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the party's control. Section 79(2)(c) 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

Did the applicant have circumstances that prevented him from attending the hearing which could not be anticipated and were beyond his control? Had the applicant attended would he have presented evidence that would change the final decision? Does the applicant have evidence that the arbitrator's decision was obtained by fraud?

Facts and Analysis

Unable to Attend

In order to meet this test, the application must establish that the circumstances which led to the inability to attend the hearing were both:

- beyond the control of the applicant, and
- could not be anticipated.

In their application for review on the grounds that they were unable to attend, the tenants state "*B(male tenant) was never given the registered mail telling him about the hearing*" The tenants also provide a tracking number which they say when tracked will show that the registered mail was returned to the sender.

In her decision dated March 13, 2012, the Dispute Resolution Officer found that the tenant was duly served with the landlord's application and the notice of hearing, in accordance with section 88 and 89 of the *Residential Tenancy Act*. The landlord mailed the notice of hearing package by registered mail to the dispute address. Accordingly, I find that the tenant was properly served with the documents

The tenants state that if they had attended the hearing they would have testified that the landlord knew that the male tenant was not available from Jan31 to March 13, 2012 and would have presented a letter from the male tenant's work place to confirm this.

The Dispute Resolution Officer made the decision based on the fact that the tenants had received a notice to end tenancy on February 12, 2012 and had not paid the outstanding rent nor had they applied for arbitration to dispute the notice to end tenancy. I find that the testimony that the tenant would have offered, had he attended and the letter from his work place, would have had no effect on the final outcome.

The applicant has not provided any additional information or evidence that he would have presented had he attended, that would change the decision of the Dispute Resolution Officer. Accordingly, I find that the application for review on this ground must fail.

Decision Obtained by Fraud

This ground applies where a party has evidence that the Dispute Resolution Officer'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".

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.

On this ground for review, that the dispute resolution officer's decision was obtained by fraud, the applicant states "*Why would D (landlord) knowingly only place B (male tenant) on registered mail while I was at home during this time and not sending it to where he was*" Based on the findings of the Dispute Resolution Officer, I find that the tenant was duly served with the notice of hearing.

The applicant also goes on to say that the landlord did not inform the Dispute Resolution Officer that both parties were involved in a second dispute which was scheduled to be heard on the next day (March 14, 2012)

The tenant referred to the second dispute and requested me to read that decision. Upon review of the decision from the second hearing, I find that that dispute involved a rental unit that is different from the rental unit which is the subject of this dispute. Therefore that decision bears no relevance to the issues at hand.

I find that the applicant has failed to prove that the arbitrator's decision was obtained by fraud and accordingly, I find that the application for review on this ground must fail.

Decision

The decision made on March 13, 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 27, 2012.

Residential Tenancy Branch