



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF OLC RP RR

Introduction

This is an application filed by the landlord on April 11, 2012 for review of a Dispute Resolution Officer's decision dated March 20, 2012 on the above noted matter.

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

In this application the landlord relies on the second and third grounds; new and relevant evidence, and evidence that the decision was obtained by fraud.

Facts and Analysis

Under the second ground, the landlord states that she has information and letters that confirm the incident. The landlord attached 6 typed letters and information concerning mould taken from the internet.

Since I note that the landlord did not participate at the hearing and provided no reasons in her application as to why she did not attend, it is not necessary that I consider the landlord's submissions concerning evidence in this matter.

Under the third ground, the landlord submits in part that; false information was submitted; that the tenant knew the information was untrue and omitted information that would detriment their case; and that the tenants provided information to achieve the desired outcome.

Residential Tenancy Policy Guideline #24 addresses the grounds for review. Concerning fraud the guideline states in part:

“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 the evidence was a significant factor in the making of the decision. The party alleging fraud must allege and prove new 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 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.

It is not enough to allege that someone giving evidence for the other side made false statements at the hearing, which were met by a counter-statement by the party applying, and the whole evidence adjudicated upon by the arbitrator. A review hearing will likely not be granted where an arbitrator prefers the evidence of the other side over the evidence of the party applying.”

The tenant’s argument does not constitute new evidence of fraud, and it could have been presented during the original hearing, had the landlord attended. The review process is not an opportunity to re-argue the case, contrary to the landlord’s opinion that RTB does not like to review hearings. Rather, the landlord did not provide new material facts to support that evidence was obtained by fraud.

Section 81 of the Act provides in part that the director may dismiss or refuse to consider an application for review if the application does not disclose sufficient evidence of a ground for the review.

Decision

The decision made on March 20th, 2012 is hereby confirmed.

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: April 12, 2012.

Residential Tenancy Branch