



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MRN OPR

Introduction

This is an application filed by the tenants on May 24, 2012 for review of Dispute Resolution Officer decision and order dated X, 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

In this application the tenants rely on the third ground: evidence that the director's decision was obtained by fraud.

Facts and Analysis

The tenants submit that the landlord withheld information during an ex-parte Direct Request proceeding concerning an order of possession for unpaid rent. The tenants provided a copy of an electronic financial transaction dated May 1, 2012, showing that the funds corresponding to the exact amount of unpaid rent alleged by the landlord were transferred into the landlord's account.

The landlord's application for dispute resolution states that the tenants paid \$500.00 on May 2, 2012, that they did not pay the balance nor apply for dispute resolution within 5 days of receiving a 10 Day Notice to End Tenancy.

In their application, the tenants state when the landlord served them the 10 day notice, they told the landlord that rent was paid and that the landlord simply walked away. The also state that full rent was taped on the landlord's door on April 30, 2012, but that it was never picked in order to place the tenants in this situation and obtain an order of

possession. The tenants state that rent was paid and that the landlord's information is fraudulent.

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.”

I accept the tenants' documentary evidence that they transferred funds from their account to pay rent on May 1, 2012. Since the landlord proceeded by way of Direct Request, the tenants were not afforded an opportunity to be heard, and I find that the information provided in this application for review, had it been presented at a hearing, may have produced a different outcome. The landlord's application is silent about any dealings with the tenants concerning a rent cheque taped to his door, or their attempts to deliver the rent on time. In light of the tenants' submissions it appears that the decision under review was obtained by fraud.

Decision

The decision and order issued by the Dispute Resolution Officer on May 23, 2012 are suspended; therefore I allow the tenants' application for review and the tenancy will continue.

Notices of hearing are included in this review consideration. The tenants must serve the Notice and a copy of this decision on the landlord within 3 days of receipt of this decision.

Fact sheets are available on the Residential Tenancy Branch website at <http://www.rto.gov.bc.ca/content/publications/factSheets.aspx>.

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: May 30, 2012.

Residential Tenancy Branch