



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: FF MND MNSD

Introduction

A dispute resolution hearing was held on June 28, 2012 and a decision and order were issued on the 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 the dispute resolution officer's decision was obtained by fraud.

Facts and Analysis

The application contains information under Reason Number 3

The applicant states the following:

- "The information that the landlord provided stating that the rent had been paid late 4 times since January 2012 was false. The months in question were January, February, May and June 2012. The only rent where there was an issue was on February 2012 As the acting landlord did not accept the cheque as my mom was paying my rent for me. They then accepted cash for my rent at a later date. I have included copies of the cashed cheques (bank stamped) and Bank

statements from my mother's account showing that my rent was paid on time on the months in question.”

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 it is my finding that the applicant has not met the burden of proving that the Dispute Resolution Officer's decision was obtained by fraud.

First of all, the evidence she has provided does not prove that the rent was paid on the first of the month. The cheques may be dated on or before the first of the month however there is no way for me to know when those cheques were given to the landlord.

Secondly I fail to see why these arguments could not have been made, and these documents presented, to the dispute resolution officer at the original hearing.

Thirdly, in the decision from the original hearing, the Dispute Resolution Officer states that the tenant acknowledged the late payments of rent. If this was false information I find it hard to believe that she would have acknowledged the late payments at the original hearing.

Decision

This application for a review hearing is dismissed.

The decision made on June 28, 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: July 19, 2012.

Residential Tenancy Branch