



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC MNR MNSD

Introduction

On July 23, 2012, a hearing was conducted to resolve a dispute between these two parties. Both parties had made application. The landlord had applied for a monetary order to retain the security deposit and the tenant had applied for its return. The Dispute Resolution Officer granted the tenant's application and dismissed the landlord's application. The landlord has applied 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)(b) and (c) of the *Residential Tenancy Act* (the "Act"). Section 79(2) (b) provides that the director may grant leave for review if a party has new and relevant evidence that was not available at the time of the original hearing. 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

Does the applicant have new and relevant evidence that was not available at the time of the hearing? Does the applicant have evidence that the Dispute Resolution Officer's decision was obtained by fraud?

Facts and Analysis

New and Relevant Evidence

Leave may be granted on this basis if the applicant can prove that:

- he or she has evidence that was not available at the time of the hearing;
- the evidence is new,
- the evidence is relevant to the matter before the Dispute Resolution Officer,
- the evidence is credible, and
- the evidence would have had a material effect on the decision.

Only when the applicant has evidence which meets all five criteria will a review be granted on this ground.

On the ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, the applicant states that the payment of the utility bill was overlooked by the Dispute Resolution Officer and that the applicant has “*renewed evidence*” that the tenants’ dogs did most of the damage and that there were no dogs in the rental unit prior to this tenancy. The applicant also adds that he has witness statements that will describe the condition of the rental unit at the start and end of the tenancy.

“New” evidence includes evidence that has come into existence since the arbitration hearing. New evidence does not include evidence that could have been obtained before the hearing took place.

On the ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, I find that the applicant has not provided any new evidence. All the evidence listed above was in existence, available, and some of it was filed and presented at the time of the hearing.

I find that the tenant is testifying that the evidence he submitted with his application was overlooked and not taken into consideration in the making of the decision. The landlord states that the payment of the utility bill was not taken into account when the Dispute Resolution Officer issued a monetary order to the tenant. This discrepancy can be resolved by applying for a correction.

The applicant has attached a letter of complaint which states that his witnesses were not fully heard and that his evidence was not considered. Even though the applicant finds that his evidence was not used in the making of the decision, the applicant has not submitted any new evidence and therefore has failed to meet the test to establish grounds for review in this tribunal and accordingly, I find that the application for review on this ground must fail.

Since the applicant did file evidence to support his claim and states that it was not considered and the witnesses were not heard in an appropriate manner, the applicant is

alleging that the Dispute Resolution Officer committed an error by overlooking the evidence and testimony presented by the applicant.

This ground for review is not designed to provide parties a forum in which to rebut findings by the Dispute Resolution Officer or to allege an error of fact or law, but to provide evidence which could not have been presented at the time of the hearing because it was not in existence at that time.

The applicant is free to apply for judicial review in the Supreme Court, which is the proper forum for bringing allegations of error.

Decision obtained by Fraud

This ground applies where a party has evidence that the Dispute Resolution Officer's decision was obtained by fraud. 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 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 alleges that the tenant committed fraud by lying about the state of the unit at move in, despite the testimony of the witnesses. The applicant also goes on to say that the witness' fears of retaliation from the tenant were realized when the tenant made a complaint to the witness' employer. The applicant states that the witnesses cleaned the rental unit prior to the start of tenancy, and would testify about the condition of the unit but did not get an opportunity to do so. The applicant also adds that the tenant lied when she tried to portray the unit as dirty when she moved in.

With respect to the matter the applicant asserts is fraudulent, it was not a matter unknown to the applicant at the time of the original hearing. It was in existence and could have been addressed at the original hearing. The applicant may disagree with the Dispute Resolution Officer's findings of fact, but he had an opportunity to respond to the tenant's evidence at the hearing.

The applicant has not provided me with new evidence to support the allegation that the decision under review was obtained by fraud. The applicant has not proven any new or newly discovered material facts and how that evidence could have been a significant factor in the making of the decision. 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 Dispute Resolution Officer. A review hearing will likely not be granted where a Dispute Resolution Officer prefers the evidence of the other side over the evidence of the party applying.

The application discloses insufficient evidence that the decision under review was obtained by fraud; and therefore, fails to satisfy the inherent burden of proof. Accordingly, I find that the application for Review on this ground must also fail.

Therefore, **I dismiss the application for Review and confirm the original decision dated July 23, 2012.**

The applicant is at liberty to apply for a correction at the Residential Tenancy Branch Office to address the amount of unpaid utilities and/or for a judicial review in the Supreme Court of British Columbia

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: August 21, 2012.

Residential Tenancy Branch