



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC

Introduction

On May 15 and June 05, 2012, hearings were conducted to resolve a dispute between these two parties. Both parties had made application for monetary orders. The Dispute Resolution Officer granted a portion of the tenant's application and ordered the tenant to remove his belongings from the landlord's workroom. The tenant 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 “*This report contains false information, several inaccuracies and inconsistency*”. The applicant goes on to say that responsible adjudication for serious health issues requires a professional awareness in mould remediation. The applicant describes the events that involved the actions of the landlord as having worsened the situation.

The applicant also faults the Dispute Resolution Officer for claiming “*recent mould education*” and making a decision of interference on the part of the tenant without “*a shred of evidence*”. The applicant concludes that the decision is “*prejudicial and fraud*”

The applicant has not attached any documents to support his application for review on the grounds of new and relevant evidence.

“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 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.

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 has colour coded portions of the decision into four categories as follows:

1. *False information*
2. *Person knows it is false inaccuracies and inconsistencies*
3. *Desired outcome millionaire landlord and lawyer with uneducated adjudicator*
4. *Shift responsibility*

I have reviewed the colour coded portions of the decision and I find that the applicant is attempting to reargue his case.

With respect to the matters the applicant asserts are fraudulent, they were not matters unknown to the applicant at the time of the original hearing. They were 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 landlord'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.

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.

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 12, 2012.**

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 23, 2012.

Residential Tenancy Branch