



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Code: FF MNR MNSD OPB OPR

Introduction

A dispute resolution hearing was held on July 27, 2012 and a decision order was issued on July 31, 2012.

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

At issue is whether or not the dispute resolution officer's decision was obtained by fraud.

Facts and Analysis

The application contains information under Reasons Number 3

The applicant states:

- During the hearing the landlord said that he had not agreed to the termination of the tenancy. This is false information. The truth is he agreed to the termination. The landlord gave consent for the tenant's early departure from the lease in this case.

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 the applicant has not provided any new information that was not known to the applicant at the time of the hearing, and in fact the applicant made the same claims at the hearing, but failed to provide any evidence in support of the claims.

Therefore this application is an attempt to re-argue the case by providing more evidence, and the review process is not an opportunity to re-argue the case.

Further even if this were an opportunity to provide more evidence and re argue the case, the e-mails provided by the applicant do not confirm the applicants claim that the landlord agreed to an early end to the tenancy, they simply confirm that the tenant wishes to leave the tenancy early.

Decision

The application for a review hearing is denied.

The decision and order issued on July 31, 2012 stand.

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