



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: O ARI

This is an application by the tenant to review the decision of an Arbitrator dated October 11, 2012 relating to the above-noted rental unit.

I refer to section 79(2) of the Act which provides that a decision or order of the director may be reviewed only on one or more of the following grounds:

- a. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control;
- b. A party has new and relevant evidence that was not available at the time of the original hearing;
- c. A party has evidence that the director's decision or order was obtained by fraud.

The tenant applied for a review on the basis of the first and third grounds, namely: that he was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond his control, and that he has evidence the decision was obtained by fraud. With respect to the first ground, in the application the tenant claimed as follows: "I was primary care for my 8-day old baby girl and unable to attend".

Residential Tenancy Policy Guideline #24, Grounds For Review of an Arbitrator's Decision contains the following passage concerning a review on the ground that the party was unable to attend the hearing:

In order to meet this test, the application and supporting evidence must establish that the circumstances which led to the inability to attend the hearing were both:

- beyond the control of the applicant, and
- not anticipated.

A dispute resolution hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.

The tenant was served with the application and Notice of Hearing on September 5, 2012. He had ample time to make arrangements to be available for the hearing, or to request an adjournment; he did neither. The application for review is denied on this ground.

With respect to the allegation of fraud, the tenant said that:

I believe that the landlord's choices not to obtain a Worksafe BC Notice of Project or City Building Permit was an intentional deception made for personal gain or a gain of an unfair advantage.

The tenant also submitted that the landlord should not have been granted a rent increase because he said that the rental property has been neglected for many years and the repairs were foreseeable.

The Policy Guideline states with respect to fraud as follows:

The application for the review consideration must be accompanied by sufficient evidence to show that false evidence on a material matter was provided to the RTB, and that this evidence was a significant factor in the making of the decision. The application package must show the newly discovered and material facts were not known to the applicant at the time of the hearing, and were not before the RTB. The application package must contain sufficient information for the person conducting the review to reasonably conclude that the new evidence, standing alone and unexplained, supports the allegation that the decision or order was obtained by fraud.

A review may be granted if the person applying for the review provides evidence meeting **all three** of the following tests:

- 1 information presented at the original hearing was false;
- 2 the person submitting the information knew that it was false; and,
- 3 the false information was used to get the outcome desired by the person who submitted it.

In the decision under review the arbitrator decided that the landlord was entitled to a rent increase because of his finding that: "...the monthly rent resulting from the annual rent increase allowed under section 42 of the *Act* and section 22 of the *Regulation* would result in a monthly rental for this unit that would be significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit."

The tenant has not provided evidence to establish that evidence presented at the hearing was false and was a significant factor in the making of the decision. The increase was based on the finding that the rent after the allowable increase would be lower than the rent for similar units in the area. I find that the decision under review was not based on any supposedly fraudulent evidence. The tenant's application for review is denied on this ground. I therefore dismiss the application for review on the basis that the application discloses no evidence of a ground for review.

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: November 14, 2012.

Residential Tenancy Branch