



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNR MNDC O OLC RR

This is an application filed by the tenant for review of the October 29, 2012 decision of a Dispute Resolution Officer. The applicant relied on sections 79(2)(b) and (c) of the *Residential Tenancy Act* (the "Act") which provide 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 or if the party has evidence that the decision was obtained by fraud.

The decision under review was the outcome of the tenant's application to cancel a 10 day Notice to End Tenancy for unpaid rent and for a monetary award, a rent reduction and an order that the landlord comply with the Act. The tenant's application for a monetary order was dismissed as was her application to cancel the Notice to End Tenancy for unpaid rent. The landlord was granted an order of possession effective two days after service on the tenant.

In her application for review the tenant claimed to have new and relevant evidence that was not available at the time of the original hearing. In her application for review she said:

Witness was not allowed to speak. Arbitrator would not accept all evidence as she was satisfied with what she heard. Would not look at my claim. No structure

The tenant submitted documents, none of which constituted new evidence that was not available at the time of the original hearing. Most of the documents submitted in support of the review were documents that were before the arbitrator at the original hearing, but with handwritten notations added by the tenant after the hearing. The tenant appears to be claiming that the arbitrator did not give her a fair hearing. While this may be an argument that could be made to the Supreme Court on a judicial review application, it does not constitute a ground for review under the *Residential Tenancy Act*. I deny the application for review on this ground.

The tenant's further ground for requesting a review is based on her assertion that the Dispute Resolution Officer's decision or order was obtained by fraud. In her review application the tenant said:

Landlady denied accepting rent for month disputed. A receipt was given but arbitrator dismissed it because it was wrote on after. (For my notes at hearing) landlady also wrote on it.

In the decision under review the Dispute Resolution Officer addressed the tenant's evidence with respect to receipts for rent payments. The Dispute Resolution Officer noted the landlord's testimony that the receipts had been written by the tenant; that the landlord did not initial or sign them and that the landlord denied receiving the rent in question. The Dispute Resolution Officer made a finding that, despite the supposed receipts, the tenant did not pay the rental arrears. She dismissed the tenant's application in its entirety and granted the landlord an order for possession.

The Residential Tenancy Policy Guideline #24 concerning Review applications contains the following passage:

A party who is applying for review on the basis that the arbitrator's decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the arbitrator, 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 arbitrator, and from which the arbitrator 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 arbitrator finds that the applicant has met this burden, then the review will be granted.

The tenant has not alleged any new and material fact or a newly discovered and material fact. These were facts known to the applicant at the time of the original hearing. The review application amounts to an attempt to re-argue matters dealt with at the original hearing; but she has not provided evidence of fraud. The tenant's application for review on the ground that the DRO's decision was obtained by fraud is denied.

For the above reasons I dismiss the application for review. The original decision and order dated October 29, 2012 is confirmed.

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