



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR OPR

Introduction

On October 26, 2012, a hearing was conducted to resolve a dispute between these two parties. The landlord had applied for an order of possession and for a monetary order for unpaid rent. The tenant did not attend the hearing. The Arbitrator granted the landlord's application. The tenant has applied for a review of this decision.

Division 2, Section 72(2) under the *Manufactured Home Park 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 72(2)(a)(b) and (c) of the *Manufactured Home Park Tenancy Act* (the "Act").

Issues

Was the tenant unable to attend the hearing because of circumstances that could not be anticipated and were beyond his control? Does the tenant have new and relevant evidence that was not available at the time of the hearing? Does the tenant have evidence that the Arbitrator's decision was obtained by fraud?

Facts and Analysis

Unable to Attend

An arbitration 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.

In his application for review on the grounds that he was unable to attend, the tenant states that he was unaware of the hearing as his mail was stolen and he did not receive the notice of hearing. The applicant has not filed any evidence regarding this alleged theft.

In the decision dated October 26, 2012, the Arbitrator found that the documents were deemed sufficiently served in accordance with section 89 of the *Residential Tenancy Act*.

Even if I accept that the tenant did not receive the notice of hearing because it was stolen, I have to determine whether the decision would be different if the tenant had attended? The Arbitrator made a decision based on the fact that the tenant was served a notice to end tenancy for unpaid rent on September 10, 2011 and did not dispute the notice nor did he pay rent within the required timeframe. The Arbitrator also determined that the notice to end tenancy was properly served by registered mail.

Therefore, I find that even if the tenant had attended the hearing, it would not have changed the decision of the Dispute Resolution Officer.

Section 81(1) (b) (iii) of the Act allows the director to dismiss an application for review if the application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied. Accordingly, I find that the application for review on this ground must fail.

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.

I note that in his application for review, the applicant states that his new evidence consists of “*4 Prior R. T. B. Hearings*”

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 which consists of decisions from prior hearings was in existence at the time of the hearing.

I further find that since the tenant has not submitted any new evidence and has failed to meet the criteria of the test to establish grounds for review in this tribunal, the application for review on this ground must fail.

Decision Obtained by Fraud

This ground applies where a party has evidence that the decision was obtained by fraud. Fraud is the intentional “false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive”.

Fraud may arise where a witness has deliberately misled the Arbitrator by the concealment of a material matter that is not known by the other party beforehand and is only discovered afterwards. Fraud must be intended. A negligent act or omission is not fraudulent.

On this ground for review, that the Arbitrator’s decision was obtained by fraud, the applicant alleged that the landlord filed an improper application to the Residential Tenancy Branch and did not follow procedures set out by “*Estate Act of B.C., Probate Act of B.C. and other Acts*”

Again, the tenant received the notice to end tenancy under the *Residential Tenancy Act* and chose not to dispute it. The tenant was put on notice that the landlord intended to act in accordance with the *Residential Tenancy Act* and therefore had the opportunity to dispute the notice.

The Arbitrator made his decision based on the fact that the tenant was served a notice to end tenancy for unpaid rent on September 10, 2011 and did not dispute the notice nor did he pay rent within the required timeframe.

The applicant has failed to prove that a fraud was perpetrated and accordingly, I find that the application for review on this ground must fail.

This ground for review is not designed to provide parties a forum in which to rebut findings by the Arbitrator or to allege an error of fact or law. The applicant is free to apply for judicial review in the Supreme Court, which is the proper forum for bringing allegations of error.

Decision

The decision made on November 26, 2012 stands.

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 08, 2012.

Residential Tenancy Branch