



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute code: CNQ

Introduction

This is an application by the tenant for a review of the Dispute Resolution hearing decision of dated February 26, 2013.

Section 79(2) of the *Residential Tenancy Act* states that a party to the dispute may apply for a review of the decision. The application for review must contain reasons to support one or more of the following grounds for review:

- 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.

In this application, the tenant has applied for review under the ground of fraud (c).

Issues

Has the applicant for review provided sufficient evidence to support one of the indicated grounds for review?

Facts and Analysis

The original hearing was held on cross applications from both the tenant and the landlord. The landlord made an application seeking an Order of Possession based on a One-Month Notice to End Tenancy for Cause on the basis that the tenant no longer qualified for subsidized housing. The tenant had filed seeking an order to cancel the One-Month Notice to End Tenancy for Cause.

The landlord was successful in the application as the arbitrator determined that tenants are subject to a rent subsidy based on a written agreement to provide materials necessary for the landlord to be satisfied that an assessment of income and assets is accurate. The arbitrator made the following finding:

“While the tenant advocate relied heavily on arguments as to the necessity of some items required for the asset and income review, I find it is not within my purview to question the criteria used by the landlord or BC Housing.”

The tenant is alleging that the landlord had obtained the decision by fraud and submitted additional evidence to support their request for review consideration. This evidentiary material consisted of written testimony containing arguments from the tenant relating to the rental subsidy and the manner of assessing whether the tenant met the eligibility criteria entitling the tenant to be housed in the complex.

With respect to the ground put forward by the tenant that the decision was obtained by fraud, I find that the tenant apparently took issue with the fact that the arbitrator declined to consider how the tenant's income was assessed and the tenant is objecting to the conclusions reached by the landlord in regard to disclosure of the tenant's income.

I find that this is a matter that could have been brought up during the hearing in the tenant's testimony and, in fact, likely was. However, the testimony about this topic would not be a relevant factor considered by the arbitrator presiding over the hearing because criteria for the tenant's entitlement to subsidized housing is within the arbitrator's statutory authority to determine.

I find that the tenant's allegation of fraud in this application for review consideration consisted of arguments about a subject matter that could never be determined by the arbitrator in any respect. Because the accuracy of the landlord's assessment about the tenant's eligibility for housing, based on income criteria, was not a relevant consideration in the arbitrator's determination, it follows that, whether the data was correct or inaccurate, this information could have no possible effect on the outcome of the hearing decision.

While it is clear that the tenant has taken serious issue with the manner in which the landlord assessed his eligibility, this fact does not serve to make this a case of fraud under the Act for the purpose of justifying a review hearing. The specific matter brought forth by the tenant in this request for review, is not a matter governed by the Residential Tenancy Act and, as stated earlier in this decision, remains beyond the arbitrator's statutory authority to rule upon.

In regard to the tenant's position relating to conclusions reached by the landlord about the tenant's income tax, this is also not a topic that can be dealt with by the adjudicator.

With respect to the tenant's claim that the landlord failed to follow “legal procedure” in serving the One Month Notice to End Tenancy, I find that the fact the tenant filed for dispute resolution on January 4, 2013, disputing the landlord's Notice, was sufficient to

support the conclusion that this Notice was served. Moreover, I find that the arbitrator duly heard and considered the tenant's arguments and objections, if any were expressed on this subject, after which the arbitrator ruled that the document was served and I have no authority under the Act to over-rule this previous finding.

Given the above, I find that the tenant's position that the arbitrator's decision was obtained by fraud, was not sufficiently supported by the evidence provided. Therefore, I am unable to find this to be a valid ground upon which to justify a review.

Section 81(1) of the Act states that the arbitrator may dismiss or refuse to consider the application, if the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely, if the application does not disclose sufficient evidence of a ground for the review, if the application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the arbitrator should be set aside or varied, or if the application is frivolous or an abuse of process.

Pursuant to Section 81(b) (ii) of the Residential Tenancy Act, I must dismiss the application for review on the basis that it does not disclose sufficient ground for a review.

The applicant has not succeeded in demonstrating that the evidence contained in this application would meet the criteria for granting a review under the grounds cited and I hereby dismiss this application without leave.

Therefore the hearing decision rendered on February 26, 2013, still stands.

Decision

I dismiss the application for review consideration and confirm the original decision and order of February 26, 2013.

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: March 18, 2013

Residential Tenancy Branch