



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE 127 SOCIETY FOR HOUSING
and [tenant name suppressed to protect privacy]

REVIEW DECISION

Dispute Codes: MNR OPR

Introduction

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.

The tenant applies for review on the following grounds:

- A party has new and relevant evidence that was not available at the time of the original hearing.
- A party has evidence that the director's decision or order was obtained by fraud.

An Arbitrator may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the issues raised can be dealt with under the provisions of the Legislation that allow an Arbitrator to correct a typographical, arithmetical or other similar error in the decision or order; clarify the decision, order or reasons, or deal with an obvious error or inadvertent omission in the decision, order or reasons;
- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- the application does not disclose sufficient evidence of a ground for review;

- the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the Arbitrator should be set aside or varied;
- the application is frivolous or an abuse of process;
- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

Issues

Does the tenant have new and relevant evidence that was not available at the time of the original hearing? Has the tenant supplied sufficient evidence to show that the decision/order was obtained by fraud?

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 original arbitration hearing;
- the evidence is new;
- the evidence is relevant to the matter which is before the Arbitrator;
- the evidence is credible, and
- the evidence would have had a material effect on the decision of the Arbitrator

Only when the applicant has evidence which meets all five criteria will a review be granted on this ground.

It is up to a party to prepare for an arbitration hearing as fully as possible. Parties should collect and supply all relevant evidence to the arbitration hearing. "Evidence" refers to any oral statement, document or thing that is introduced to prove or disprove a fact in an arbitration hearing. Letters, affidavits, receipts, records, videotapes, and photographs are examples of documents or things that can be evidence.

Evidence which was in existence at the time of the original hearing, and which was not presented by the party, will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through taking reasonable steps, have become aware of the evidence.

"New" evidence includes evidence that has come into existence since the arbitration hearing. It also includes evidence which the applicant could not have discovered with

due diligence before the arbitration hearing. New evidence does not include evidence that could have been obtained before the hearing took place.

Evidence is “relevant” that relates to or bears upon the matter at hand, or tends to prove or disprove an alleged fact.

Evidence is “credible” if it is reasonably capable of belief.

Evidence that “would have had a material effect upon the decision of the Arbitrator” is such that if believed it could reasonably, when taken with the other evidence introduced at the hearing, be expected to have affected the result.

A mere suspicion of fresh evidence is not sufficient.

Decision Obtained by Fraud

This ground applies where a party has evidence that the Arbitrator’s 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.” Intentionally false testimony would constitute fraud, as would making changes to a document either to add false information or to remove information that would tend to disprove one’s case. 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.

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.

It is not enough to allege that someone giving evidence for the other side made false statements at the hearing, which were met by a counter-statement by the party applying, and the whole evidence adjudicated upon by the Arbitrator. A review hearing will likely not be granted where an Arbitrator prefers the evidence of the other side over the evidence of the party applying.

Facts and Analysis

The Decision under review is a decision rendered March 15, 2012 in which the tenant/applicant's application seeking a monetary order and to restrict the landlord's access to the rental unit were dismissed. In his Decision the Arbitrator determined that the landlord had not violated the Act, regulation or tenancy agreement in regard to the treatment of bedbugs in the tenant's rental unit and he also found that the tenant had not suffered any loss for which he should be compensated.

In response to the Review Application instruction to list each item of new and relevant evidence and state why it was not available at the time of the hearing and how it is relevant the tenant/applicant states:

It was NOT acknowledge at the time of the HEARING that this FALSE EVIDENCE was used by the Landlord to EVICT, causing the Tenant Mental Pain and Suffering, Traumatic Stress, Anxiety and Insomnia (see EXHIBIT "C" – (Applicant's Physician's letter).

(reproduced as written)

Based on the tenant's submission I find that the application does not meet the five criteria set out above that would allow me to grant a Review. In particular, the tenant/applicant has failed to show:

- that the evidence now supplied was not available at the time of the original arbitration hearing;
- that the evidence is new; and
- that the evidence would have had a material effect on the decision of the Arbitrator

Fraud

Under this ground I find that the submissions of the tenant/applicant now provided represent an attempt to reargue the case as opposed to demonstrating fraud. I find the evidence to be insufficient to show that false evidence on a material matter was provided to the Arbitrator, that the evidence was a significant factor in the making the decision, that it is new or newly discovered and that it was unknown to the tenant/applicant at the time of the hearing.

Overall the application does not disclose sufficient evidence of a ground for review, nor does the application disclose any basis upon which, even if the submissions in the application were accepted, the decision or order of the Arbitrator should be set aside or varied.

The original decision dated March 15, 2013 is therefore 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: April 12, 2013

Residential Tenancy Branch