



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes: O

This is an application by the tenant for a review of a Decision and Order rendered by an Arbitrator on April 18, 2013.

The tenant/applicant applies for review on the following grounds:

1. A party was unable to attend the original hearing due to circumstances that could not be anticipated and that were beyond his or her control;
2. A party has evidence that the Arbitrator's decision was obtained by fraud.

The Decision and Order under review is a Decision to grant the landlord an Order of Possession based on a mutual agreement to end the tenancy.

Unable to Attend

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

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

In his application the tenant/applicant states he was unable to attend the hearing because he had a high fever the night before the hearing and he could not get up and leave his bed on the day of the hearing. The applicant has supplied no medical evidence to support a finding that he was hospitalized or otherwise too ill to attend the hearing or to arrange to have an agent attend for him.

I find that the applicant has failed to establish that the applicant was unable to attend the hearing because of circumstances that could not be anticipated and were beyond his control.

Decision Obtained by Fraud

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.

In this part of his application the tenant/applicant states that the contract between the parties indicated that the tenant could remain in the rental unit until March 31, 2013 yet the landlord applied for an Order of Possession on March 21, 2013. The applicant states that this has resulted in a "...faulty process..." Although the landlord may have made an application on March 21, 2013 the hearing was not held and an Order of Possession not issued until April 18, 2013, effective 2 days after service and long after the March 31, 2013 tenancy end date.

With respect to the tenant/applicant's second issue for review on the ground of fraud the tenant says that he understood that the agreement converted to a month-to-month tenancy. Further, that the rent cheque for April was cashed by the landlord on April 2, 2013 even though the landlord sought an Order of Possession that required the tenant to vacate the premises by April 19, 2013. Further, the tenant says he did not receive a receipt for April 2013 rent which was paid by cheque.

With respect to the tenant/applicant's argument that he thought the tenancy was to revert to a month-to-month. In this Application for Review the tenant states that "Based on lease term contract, tenants can stay until March 31st, 2013..." (*Reproduced as written*). From this statement, it seems clear that the tenant/applicant knew the tenancy was to end March 31, 2013 and that it did not revert to a month-to-month tenancy. Indeed this was also the finding of the Arbitrator.

With respect to the cashing of April's rent cheque by the landlord, rent is due and payable in full in advance. In this tenancy rent was due on the first of each month. If the tenant remained in the rental unit until April 19, 2013, he would have been required to pay rent for April. Further, if the tenant paid rent by way of cheque as he has stated in his Application for Review, his cancelled cheque would serve as his receipt for April's rent.

In any event, overall with respect to the tenant/applicant's application for review on the ground of fraud I find that the applicant has failed to 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.

Conclusion

I find that the application does not disclose sufficient evidence of a ground for review. The application for review is therefore dismissed and the original Decision and Order stand.

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 29, 2013

Residential Tenancy Branch