



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: CNR MNSD RR

Basis for Review Consideration

Section 79(2) of the Residential Tenancy Act (Act) states that 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.

Applicant's Submission

The tenant's Application for Review Consideration states the decision should be reviewed on 2 of the grounds.

1. A party has new and relevant evidence that was not available at the time of the original hearing.

The tenant has applied for review consideration of the decision and Order issued on March 4, 2013. On March 4, 2013 the tenant and landlord attended a hearing held in response to cross-applications. The tenant's application requesting compensation and rent reduction was dismissed. The landlord was provided \$1,460.00 compensation.

The tenant submits that at the March 4, 2013 hearing the landlord was allowed to charge for damages to the suit and for extra rent. As the tenant had vacated the unit and no inspection was completed the tenant states there was no evidence damage

was caused and a claim for damage should be void.

The tenant supplied a copy of a February 26, 2013 electrician's bill in the sum of \$132.10. This bill appears to be related to a dispute over alleged alterations made to the breaker box. The tenant indicated he was given a copy of the bill on March 4, 2013. The tenant submits that the damage was present at the time he moved into the unit.

2. A party has evidence that the director's decision or order was obtained by fraud.

In relation to fraud the tenant submits that the landlord knew the tenant had a generator project and that the landlord lied about this. The tenant does not explain what the generator project was and how this related to his claim of fraud.

The tenant supplied a 2 page typed letter, essentially rearguing his original application. The tenant submits that as the landlord was not given permission to be in the tenant's suite the tenant suggest the electrical repair could not have been made.

Analysis

1. A party has new and relevant evidence that was not available at the time of the original hearing.

Leave may be granted on this basis if the applicant can prove that:

- he 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 Arbitrator,
- 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.

There was no evidence before me that the submission made as part of the Application for Review Consideration by the tenant could not have been reviewed at the March 4, 2013 hearing. The tenant had that evidence on the day of the hearing and was able to make submissions at that time. I find that this is not new and relevant evidence.

2. A party has evidence that the director's decision or order 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”.

The burden of proving fraud 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.

There was no evidence before me of any submission made during the hearing that would be considered fraudulent. The tenant was present at the hearing on March 4, 2013 and was free to provide testimony at that time.

I find, based on the Application for Review Consideration submission made by the tenant that he is attempting to reargue his case. There is no evidence before me of concealment or a failure to disclose information that the tenant could not have responded to during the hearing.

Therefore, in the absence of new and relevant evidence or fraud, I dismiss the Application for Review Consideration.

Conclusion

I dismiss the Application for Review Consideration. The original decision and order(s) made on March 04, 2013 are confirmed

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 02, 2013

Residential Tenancy Branch