



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR RP

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 and could not have been obtained through due diligence.
- 3. A party has evidence that the director's decision or order was obtained by fraud.**

This is an application for review consideration by the landlord with respect to a hearing held on May 13, 2013 to deal with an application by the tenant. The hearing proceeded in the absence of the respondent landlord and the tenant was successful in obtaining orders against the landlord for repairs and a rent abatement pending completion of the repairs.

The landlord made this application for review consideration of the May 13, 2013 decision, on the grounds that the landlord was prevented from appearing at the hearing through circumstances that could not be anticipated and were beyond the landlord's control. The landlord is also seeking a review based on the ground that the decision was obtained by fraud.

Issue(s) to be Decided

- Was the landlord unable to attend the hearing due to circumstances that could not be anticipated and were beyond the landlord's control?
- Was the dispute resolution hearing decision obtained by fraud?

Background and Evidence

Unable to Attend

In the Application for Review Consideration, the landlord indicated;

“1. On Sunday May 12th, I just returned from overseas business trip. Next day at work, I had to spend the whole day making a report to my management team about my findings and advising them how to resolve urgent issues with our client in Europe.

2. Before my trip to Europe, on April 21st 2013, I replaced the fridge and thought this was the only problem to be resolved; therefore, the tenant will drop her application for fixing the fridge and there is no need anymore to go to the dispute Resolution meeting.”

(Reproduced as written)

In order to meet the test to prove that a review should be granted on the basis that the participant could not attend, the supporting evidence must establish that the circumstances which led to the inability to attend the hearing were both:

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

A dispute resolution 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 this instance, I find that the landlord made a presumption that the tenant had withdrawn the application for Dispute Resolution, or was going to do so. The landlord apparently based this conclusion on the fact that he had duly replaced the appliance.

However, I find that the landlord has not established that the tenant made any specific written or verbal representation to the landlord that the hearing would be cancelled. Moreover, the tenant’s application for Dispute Resolution had also included a claim for monetary compensation for the loss of the use of her refrigerator and there is no indication that the landlord had compensated the tenant for the monetary claim prior to the hearing.

In addition, I find that the tenant had raised another issue in her application regarding a problem with vermin and I find that the landlord did not address this to the satisfaction of the tenant prior to the hearing date and should not have made a presumption that this

portion of the dispute was fully resolved as far as the tenant was concerned nor that the tenant would not pursue this unresolved matter through dispute resolution.

Finally, I find that the landlord's evidence, included with the Request for Review Consideration, confirms that on May 12, 2013, the day before the hearing date, the landlord had returned from his trip and had contacted the tenant. I find that the parties clearly did not resolve the issues that were the subject of the hearing and in fact had a confrontation about the tenant's claims. I find that the landlord should have expected that the hearing would proceed as scheduled the next day.

I also find that there is no indication that the landlord ever made a request, pursuant to the Act, for an adjournment, nor did the landlord send an agent to participate in the hearing on the landlord's behalf, which was his right to do.

The burden of proof is on the Applicant to prove that the criteria justifying a review of the original decision has been met under the Act.

To support a Review of the decision, the landlord is required to prove that they were not able to attend the hearing due to circumstances beyond the landlord's control.

Given the evidence, I find that the landlord's request for review consideration on the ground of being unable to attend the hearing is not sufficiently proven and must be dismissed.

Decision Obtained by Fraud

In the Application for Review Consideration, the landlord alleged that the tenant had obtained the decision by fraud.

The landlord introduced testimonial evidence with respect to the fact that the tenant still owes him money for utilities and failed to cooperate in addressing the door damage. The landlord also stated that he was not informed about the insect problem until the day before the hearing and he investigated the tenant's complaint about a leak, which was found to have no merit. The landlord included information about his experiences with the tenant. The landlord pointed out that the tenant had given him "*a hard time with some bad cheques in the past*".

When claiming fraud as a basis to review the decision, it is not enough to merely argue that the opposing party made false statements at the hearing in giving their testimony. The Residential Tenancy Guidelines state that "Fraud" is the intentional misrepresentation of a matter of fact, by false or misleading allegations, or by concealment of that which should be disclosed, which deceives and is intended to deceive.

A party who is applying for a review on the basis that the original decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided and that it was a significant factor in the decision outcome.

During a dispute resolution hearing, it is a principle of natural justice that each party is completely at liberty to give his or her own version of the facts as they see them.

Then the opposing party has an equal opportunity to refute the testimony or argue against any evidence that the applicant has presented through testimony or through evidentiary submissions.

While it is clear that the landlord has taken issue with the decision, the fact that a party continues to dispute the evidence and testimony of the opposing party and disagrees with the outcome of a hearing, will not suffice to make this a case of fraud.

In any case, I find that the landlord's allegation of fraud in this application for review consideration merely consisted of arguments that the landlord had an opportunity to put forward in advance of, or during, the hearing.

I find that, in this instance, the landlord has not produced sufficient evidence in the application to establish that fraudulent actions had been perpetrated by the tenant affecting the outcome of the hearing.

For this reason, I reject the ground of fraud put forth by the landlord to justify a review of the decision.

Section 81(1) of the Act states that the director 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 director 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 demonstrate that the evidence contained in this Application would meet the criteria for granting a review under either of the grounds cited.

Accordingly, I hereby dismiss this application without leave.

CONCLUSION

The landlord 's application for Review Consideration was not successful and the decision and orders issued on May 13, 2013, 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: May 29, 2013