



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: FF MND MNDC MNSD

Introduction

The tenant has applied for review consideration of a decision dated May 10, 2013, granted the landlord a monetary order.

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 has applied on grounds 2 and 3 for the Review Consideration.

Issues

1. Does the tenant have new and relevant evidence that was not available at the time of the original hearing?
2. Does the tenant have evidence the director's decision or order was obtained by fraud?

Facts and Analysis

The tenant writes in their application that they have new and relevant evidence that was not available at the time of the original hearing, "it was not available because it was sent to a 3rd party regular mail with no attachments other than hearing date and fact sheet." "I have pictures of the blinds their condition. The carpets, the receipt. The bathroom, the outside."

[Reproduced as written]

The Residential Tenancy Policy Guideline #24 defines new evidence as evidence that has come into existence since the dispute resolution hearing. It also includes evidence

which the applicant could not have discovered with due diligence before the dispute resolution hearing.

Evidence in existence at the time of the original hearing 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.

In this case, the tenant claims she had not received documents as it was sent to a 3rd party. However, this matter was address by the Arbitrator at the original hearing. The Arbitrator found that the landlord had complied with section 89 of the Act as the tenant provided an address of another party which she could use as a mailing address. This is not an opportunity to reargue the case.

In this case, the tenant writes that she has pictures and a receipt, however, these were in existence at the time of the original hearing and with due diligence the tenant could have submitted them at the original hearing. Therefore, I find the tenant has failed to prove that they have new and relevant evidence.

The tenant writes in their application that the information the tenant submitted for the initial hearing was false, "I sent 3 notices to [name] and The Board of Directors 15 days after move out Feb. 01-2013"

[Reproduced as written]

In this case, the tenant argues that the testimony of the landlord was fraudulent. However, the tenant has not provided evidence that the decision was obtained by fraud. The Arbitrator heard arguments from both parties on these issues in the hearing. This is not an opportunity for the tenant to reargue the case. Therefore, I find the tenant has failed to prove the decision or order was based on fraud.

Decision

Based on the above, the application and on a balance of probabilities, I find the tenant's application must be dismissed.

Therefore, I find the decision and orders made on May 10, 2013, stand and remain in full force and effect. The tenant's application for review is dismissed.

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 28, 2013

Residential Tenancy Branch