



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNR MNSD

Introduction

The hearing for which the tenant seeks a review hearing was convened on applications by both the landlord and the tenants.

The landlord had made application for a monetary award for unpaid rent, damage to the rental unit, recovery of the filing fee and authorization to retain the security deposit in set off.

The tenants had made application for return of their security deposit and recovery of their filing fee.

The hearing took place on March 14, 2013 and April 11, 2013 and the arbitrator issued a 19-page decision on April 15, 2013. In the result, she dismissed the tenants' application and awarded the landlord \$5,270.00 against which the landlord was authorized to set off the \$900 security deposit and was issued with a Monetary Order for the remaining \$4,470.

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.

In the present matter, the tenants submit that they have new and relevant evidence and evidence that the decision was obtained on the basis of fraudulent evidence given by the landlord.

Issues

Have the tenants submitted evidence that is both new and relevant?

Have the tenants proven that the landlord obtained, or largely influenced, the decision by submitting fraudulent evidence?

Facts and Analysis

On the claim of new and relevant evidence, the tenants submit that a “toxic black mold report” was overlooked when preparing evidence. In support of this claim, the tenants appear only to have submitted a copy of an email from a mycologist dated July 26, 2012 to one of the named witnesses at the hearing stating only that, “The specimen you left is very heavily contaminated with actively sporulating “Stachybotrys.”

I note that this email predates the end of the tenancy and the hearing, and therefore cannot be said to be new. Moreover, I note that the arbitrator’s decision took account of the tenants’ claim of mold and that the matter was argued at the hearing and reported in her decision.

As noted at Residential Policy Guideline 24:

“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.”

Therefore, on the claim of new and relevant evidence, I find that the evidence is not new and that tenant is merely rearguing matters considered at the hearing. I cannot find grounds to award a review hearing for that reason.

On the claim for a Review Hearing on the grounds of fraud, the tenant submits that: "Pictures taken by the landlord were obtained outside Rules of Residential Tenancy Branch guidelines (Entered house without permission or Notice) Twice!"

With respect to an application for a review hearing on the basis of fraud, Residential Tenancy Policy Guideline 24 advises, in part, that:

"The application for the review consideration must be accompanied by sufficient evidence to show that false evidence on a material matter was provided to the RTB, and that this evidence was a significant factor in the making of the decision. The application package must show the newly discovered and material facts were not known to the applicant at the time of the hearing, and were not before the RTB. The application package must contain sufficient information for the person conducting the review to reasonably conclude that the new evidence, standing alone and unexplained, supports the allegation that the decision or order was obtained by fraud."

I find that the tenant's assertion that the timing of the taking of the pictures constitutes newly discovered material facts that significantly influenced the outcome of the hearing is not substantiated on examination of the decision. For example, the last paragraph on page 6 of the decision states that:

"The tenant CD testifies that the landlord's photographs were taken before the tenants moved out. The tenant testifies that they took the majority of the animal cages with them to their new home. The tires shown in the pictures were already in the yard along with the buckets and the woodshed pile. The tenants testify that the majority of the toys were removed by the tenants. The tenants agree some items were left at the property as the landlord only gave the tenants two days to move out."

Clearly, the issue of the timing of the photographs was before the arbitrator and was taken into account in her decision. Again, I find that the tenant is simply rearguing matters that were examined at the hearing. Therefore, I find that I cannot grant a review hearing on the basis of fraud.

Decision

As the application for a review hearing has failed to establish new and relevant evidence that was not available at the time of the original hearing, or that the decision was obtained or strongly influenced by fraudulent submission by the landlord, the application is dismissed.

The request for a review hearing is denied and the Decision and Order made on April 15, 2013 remain in force and effect.

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 14, 2013

Residential Tenancy Branch