



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute codes: FF MNDC MNR O

This is an application filed by the tenant for review of the March 26, 2013 decision of an Arbitrator. The applicant relied on sections 79(2)(b) and (c) of the *Residential Tenancy Act* (the “Act”) which provide that the director may grant leave for review if a party has new and relevant evidence that was not available at the time of the original hearing or if the party has evidence that the decision was obtained by fraud.

The decision under review was the outcome of the landlord’s application for a monetary award. The landlord was awarded the sum of \$2,000.00 for the loss of June rent. The balance of the landlord’s claim was dismissed.

The tenant claimed to have new and relevant evidence consisting of e-mail messages that he thought were lost and unavailable, but discovered after the hearing. The tenant provided a written submission along with what he said was the text of the lost e-mails. Much of his submission consisted of an attack upon an earlier Residential Tenancy Branch decision concerning the tenancy that was issued on July 27, 2012.

In order to successfully argue that a review hearing should be granted, the applicant must prove both that the evidence is relevant and that it was unavailable at the time of the hearing. The e-mails referred to by the tenant are not new evidence. They could have been made available at the original hearing. The tenant’s objections to a previous decision made in July 2012 that was not the subject of a review or of an application for judicial review do not constitute new and relevant evidence. This ground for review is not designed to provide parties a forum in which to rebut findings by the Dispute Resolution Officer, but to provide evidence which could not have been presented at the time of the hearing because it was not in existence at that time. The applicant has failed to meet both parts of the test to establish grounds for review and accordingly, I find that the application for review on this ground must fail.

The tenants’ further ground for requesting a review is based on his assertion that the Dispute Resolution Officer’s decision or order was obtained by fraud. His argument that the decision was obtained by fraud is based on his disagreement with the words that were spoken during a conversation with the landlord. The tenant claimed that the

landlord and the tenant mutually agreed to end the tenancy. He also claimed that the landlord gave false evidence about the ability to re-post advertisements on a particular internet site. The tenant's submission that the landlord and the tenant mutually agreed to end the tenancy was dealt with by the arbitrator in her July 27, 2012 decision; that matter is not before me on this review and it is not now open to challenge through the review process. The tenant's claim that the landlord gave fraudulent evidence about reposting internet ads has not been proved and further it has not been shown that the matter was material to the outcome of the decision under review.

The Residential Tenancy Policy Guideline #24 concerning Review applications contains the following passage:

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.

The tenant has not shown that the decision under review was obtained by fraud; taken as a whole the review application is an attempt to re-argue the matters that were before the arbitrator at the original hearing. The tenants' application for review on the ground that the arbitrator's decision was obtained by fraud is denied.

For the above reasons I dismiss the application for review. The original decision dated March 26, 2013 is confirmed.

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 06, 2013

Residential Tenancy Branch

