



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN FOOD TECHNOLOGY & SUPPLY INC.
and [tenant name suppressed to protect privacy]

REVIEW CONSIDERATION DECISION

Dispute Codes MNR, MND, MNSD, FF

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 application for review consideration states the decision should be reviewed on the grounds of new and relevant evidence that was not available at the time of the hearing and the decision was obtained by fraud. The applicant has also applied for an extension of time to make this application.

Although the applicant applied for an extension of time in which to file for review, because he applied within fifteen days of receiving the decision, I find that an extension of time is unnecessary as he cannot be said to have filed beyond the statutorily prescribed timeframe which is based on receipt of the decision or order.

New and relevant evidence:

The applicant has filed a letter and log entries from a restoration company that conducted the work associated with the water leak. The information in the letter and the log entries confirms the landlord's testimony that the source of the water leaking into the unit below the dispute rental unit was a toilet overflow in the dispute rental unit.

The landlord states that this information from the restoration company proves that the tenant's testimony during the hearing was not truthful. The date of the letter is May 09, 2013.

Fraud:

The applicant states that the tenant committed fraud by falsely testifying in her written submission that the restoration company conducted tests and determined that the leak was from "*somewhere between the toilet pipes and under the floor between the two units*". Accordingly, the tenant concluded that she was not responsible for the cost of the restoration work.

The landlord states that the letter dated May 09, 2013 from the restoration company contradicts the tenant's testimony and indicates that the leak was from the overflowing of the toilet in the dispute rental unit.

Analysis

New and relevant evidence:

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

- he or she 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 Dispute Resolution Officer,
- 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.

It is up to a party to prepare for an arbitration hearing as fully as possible. Parties should collect and supply all relevant evidence to the arbitration hearing. Evidence which was in existence at the time of the original hearing, and 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.

I note that in his application for review, the applicant has submitted a letter dated May 09, 2013, that describes events that took place in March 2012. In his application for review, the landlord does not explain why this letter was not available prior to the hearing.

Since this letter provides information about events that took place prior to the hearing, I find that this letter is not new evidence and could have been filed into evidence prior to the hearing.

I further find that since the landlord has not submitted any new evidence, he has failed to meet the criteria of the test to establish grounds for review in this tribunal, and therefore the application for review on this ground must fail.

This ground for review is not designed to provide parties a forum in which to rebut findings by the Arbitrator or to allege an error of fact or law, 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.

Fraud

This ground applies where a party has evidence that the decision was obtained by fraud. Fraud may arise where a witness has deliberately misled the Arbitrator by the concealment of a material matter that is not known by the other party beforehand and is only discovered afterwards. Fraud must be intended. A negligent act or omission is not fraudulent.

A party 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 it was a significant factor in the making of the decision.

In his application for review the landlord states that in her written submission, the tenant falsely testified that the restoration company had determined that the source of the leak was somewhere between the base of the toilet pipes and under the floor. The landlord was provided with a copy of the tenant's evidence prior to the hearing. Therefore the landlord was informed of the evidence that the tenant intended to rely upon at the hearing.

I find that the "false" evidence deals with matters that were known to the landlords prior to the hearing and therefore the landlord had an opportunity to respond by written submission or by verbal testimony at the hearing.

It is not enough to allege that someone giving evidence for the other side made false statements at the hearing, which were met by a counter-statement by the party applying, and the whole evidence adjudicated upon by the Arbitrator. A review hearing will likely not be granted where an Arbitrator prefers the evidence of the other side over the evidence of the party applying.

In this case, the Arbitrator heard testimonies of both parties and based her decision on the wording and events as described in the letters filed by the landlord, into evidence.

The Arbitrator found that the landlord had not filed any evidence from the strata as to how they determined that the dispute rental unit was responsible for the water damage.

The landlord has not provided me with new evidence to support the allegation that the decision under review was obtained by fraud and therefore, fails to satisfy the inherent burden of proof. Accordingly, I find that the application for review on this ground must fail.

This ground for review is not designed to provide parties a forum in which to rebut findings by the Arbitrator or to allege an error of fact or law. The applicant is free to apply for judicial review in the Supreme Court, which is the proper forum for bringing allegations of error.

Conclusion

I dismiss the Application for Review Consideration. The original decision made on April 30, 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 17, 2013

Residential Tenancy Branch

