



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: FF MNDC MNR OPR

Introduction

On April 30, 2013, a hearing was conducted after the landlord had applied for an Order of Possession for unpaid rent and utilities, a Monetary Order for unpaid rent and utilities; and the filing fee. The Arbitrator granted the landlord's application and issued an Order of Possession effective two days after service and a Monetary Order for \$4,324.79. The tenant has applied for a review of these Orders.

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.

Issues

The applicant relies on sections 79(2)(c) of the *Residential Tenancy Act* (the "Act"). That the party has evidence that the arbitrator's decision or order was obtained by fraud.

Facts and Analysis

This ground applies where a party has evidence that the decision was obtained by fraud. Fraud is the intentional "false representation of a matter of fact, whether by words

or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive”.

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 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.

On this ground for review, that the Arbitrator's decision was obtained by fraud, the applicant alleges that the Arbitrator's decision was made on the same day as the hearing even though the Arbitrator did not receive the requested documents until three days later. The applicant submits that the applicant never received copies of the utility bills and never signed a tenancy agreement which was received by the RTO. The applicant alleges that the landlord who submitted this evidence knew it was false because the applicant submits that a tenancy agreement was not signed together. The applicant alleges that this false information was used to get the desired outcome because the documents that were submitted did not exist.

The applicant has provided a copy of the original decision and orders and submits that during the hearing the landlord stated that the tenant owed utility bills in the amount of \$150.00 per month but the tenant had not received copies of these bills to prove the

amount owed. The landlord was asked to fax a copy of a bill in by May 03, 2013 however the decision and orders were made on April 30 before the Arbitrator could have received the required information. I have reviewed the evidence presented and find that this evidence is documented as having been faxed to the original Arbitrator on April 30, 2013. Therefore the Arbitrator had this information in place before writing the decision.

The tenant submits that the landlord was asked to provide a tenancy agreement stating that the tenant was responsible for 70 percent of utilities. The tenant submits that the landlord cannot provide this documentation as the tenant never signed a tenancy agreement with the landlord. I have reviewed the documentation sent to the original arbitrator and find the tenants name has been signed on a tenancy agreement. Without further proof that this is not the tenant's signature I cannot determine that this document is fraudulent.

The tenant submits that no money ever changed hands between the landlord and tenant and therefore a tenancy was not established. If a tenant has been residing in a rental unit and did not dispute at the original hearing that the tenancy commenced on February 01, 2013 and that the security deposit cheque paid was returned NSF; then whether or not the tenant has paid rent for that unit then a tenancy has been established and I have no evidence to prove that the landlord has provided fraudulent or false information at the hearing.

The tenant submits that she signed a document saying she had received a 10 Day Notice but never signed anything else. The tenant submits that therefore these documents submitted by the landlord cannot have the tenant's signature unless it was somehow transferred onto a document that was written by the landlord for the purpose of this hearing. The tenant seeks a review of the hearing and the submitted documents to ascertain how the decision was made and on what grounds.

The tenant submits that the Arbitrator acknowledged that the tenant had not received the utility bills and had stated that the tenant had not asked for the bills in writing. The

tenant states that she had asked for copies of the bills in person and why is the tenant expected to pay an arbitrary amount without seeing the bills. This however does not constitute a fraudulent act by the landlord.

The application discloses insufficient evidence that the decision under review was obtained by fraud; and therefore, fails to satisfy the inherent burden of proof. The applicant has failed to prove that a fraud was perpetrated and 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.

Decision

The tenant's application for review is dismissed.

The decision made on April 30, 2013 stands.

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 13, 2013

Residential Tenancy Branch