



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes: OPR

This is an application filed by the tenant for review of the May 14, 2013 decision and order 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 direct request application for an order for possession.

In his application for review the tenant said that he had new and relevant evidence consisting of rent receipts.

He also said that arbitrator's decision or order was obtained by fraud. In his application he said that the rent receipts: "should have the for occupancy use only statement". The tenant there was a verbal agreement concerning the rent payment and the landlord agreed to accept the late payment and continue the tenancy.

In the decision under review the arbitrator noted that the landlord provided a receipt for rent paid on April 15 marked "For use and occupancy only":

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 did not apply to dispute the 10 day Notice to End Tenancy and rent was not paid within time to cancel the Notice to End Tenancy. The landlord submitted evidence that the payment was not accepted to reinstate the tenancy. The tenant's application for review on the ground that the DRO's decision was obtained by fraud is denied.

For the above reasons I dismiss the application for review. The original decision and order dated May 14, 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: June 04, 2013

Residential Tenancy Branch

