



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes: CNR OLC

This is an application filed by the tenant for review of the May 22, 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 applications by the tenant to cancel a 10 day Notice to End Tenancy for unpaid rent and the landlord’s application for an order for possession and a monetary order. The tenant’s application was dismissed and the landlord was granted an order for possession and a monetary order for unpaid rent.

The tenant claimed to have new and relevant evidence that was not available at the time of the original hearing. She submitted a copy letter dated November 15, 2010 and a number of photographs. She said in her application that the documents were not available at the time of the original hearing because: “I had packed my files and had to unpack them”.

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. This evidence was clearly available at the time of the hearing. The evidence also does not appear to be relevant to the matters in dispute at the original hearing. 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. She referred to issues concerning repairs that she claims are needed including the replacement of a dishwasher and some plumbing problems.

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.

With respect to the matter said by the tenant to be fraudulent, they are not relevant to the matters in dispute in the original decision and they were addressed by the arbitrator in his decision in any event; the matters referred to by the tenant were not a significant factors in the making of the decision and the evidence provided by the tenant was not a new and material fact or a newly discovered and material fact. These were facts known to the applicant at the time of the original hearing. The tenant's 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 May 22, 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

