



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNSD

Introduction

A dispute resolution hearing was held on May 16, 2013, and a decision and order were issued on that same date.

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 issues are whether or not the applicant was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond his control, and whether or not the original decision was obtained by fraud.

Facts and Analysis

The application contains information under Reasons Number 1 & 3

Reason Number 1

The applicant states that he was out of the country receiving medical treatments for diabetes; however the applicant has supplied no evidence in support of that claim and therefore I am not willing to grant a new hearing under Reason Number 1.

Reason Number 2

To prove an allegation of fraud the parties must show that there was a deliberate attempt to subvert justice. A party who is applying for review on the basis that the

Arbitrators 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.

In this case is my finding that the applicant has not met the burden of proving that the original decision was obtained by fraud.

The applicant claims there was an agreement between the parties; however he has supplied no evidence of that agreement.

Further the applicant claims that the tenants knew that there was rent outstanding for the month of April 2013, and therefore the decision was obtained by fraud; however that would have no effect on the arbitrator's decision, as the arbitrator's decision was based on the fact that the applicant failed to apply for dispute resolution within the required 15 day time limit.

If there is rent still outstanding the landlord still has the right to file a claim for the outstanding rent.

Decision

This application for review hearing is dismissed without leave to reapply.

The decision made on May 16, 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: June 10, 2013

Residential Tenancy Branch