



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute codes: MNR OPR

### Introduction

This is an application by the tenant for a review of a decision rendered by an Arbitrator on May 17, 2013, (the original decision), with respect to an application for dispute resolution from the landlords for an Order of Possession and a monetary award for unpaid rent. The landlords submitted their application by way of the Residential Tenancy Branch's (the RTB's) direct request procedure. As per the RTB's direct request procedure, the landlord's application was considered by way of an *ex parte* hearing.

An Arbitrator may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- the application does not disclose sufficient evidence of a ground for review;
- the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the Arbitrator should be set aside or varied.

### Issues

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.

The tenant applied for review on the basis that the original decision was obtained by fraud, the third of the grounds outlined above.

### Facts and Analysis

This ground applies where a party has evidence that the Arbitrator's decision was obtained by fraud. 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 the evidence was a significant factor in making 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, the tenant claimed that the landlords did not provide the Arbitrator tasked with considering the landlords' original application with a copy of a lease with option to purchase agreement that the tenant maintained formed the basis for the tenant's occupation of the premises. The tenant noted the Residential Tenancy Agreement (the Agreement) was signed on June 20, 2012, while the Lease with Option to Purchase was dated June 22, 2012. The tenant provided the following response to the request to identify the information at the initial hearing that was false and formed the basis for his application for review:

*The premises is occupied under a lease with option to purchase and not under Residential Tenancy Agreement as was submitted and is not valid under Residential Tenancy Act...*

The tenant attached a copy of the following to his application for review:

- the original decision;
- the Order of Possession requiring the tenant to vacate the rental unit within two days;
- the monetary Order in the amount of \$3,700.00;
- the Lease Agreement with Option to Purchase Real Estate (the Option to Purchase Agreement); and
- the direct request documents supplied to him by the landlords, which included a copy of the signed Agreement between the parties.

In reviewing the tenant's application, I confirm that the Agreement and the Option to Purchase Agreement are for the same rental property. The Agreement provided to the RTB in support of the landlords' direct request application was for a one-year fixed term commencing on July 1, 2012 for an agreed monthly rent of \$3,700.00. The Option to Purchase Agreement was a two-year fixed term commencing on July 1, 2012 for an agreed \$3,700.00 in monthly rent.

Section 15 of the Option to Purchase Agreement established that the Tenant/Buyer had the option to purchase the property for \$835,000.00 and to receive a credit of \$100,000.00 plus \$600.00 per month for rent towards the purchase price "provided no term(s) of the contract is in default."

The tenant has cited the very existence of the Option to Purchase Agreement as his grounds for maintaining that the landlords have obtained the original decision and orders by fraudulent means. However, the tenant has not claimed that the Agreement entered into as written evidence by the landlords was itself fraudulent. Rather, he has asserted that the Option to Purchase Agreement in some unexplained way negates the Agreement that he signed with the landlords two days earlier.

The tenant has not supplied any evidence as to his payment of the \$3,700.00 in rent identified as owing as of April 3, 2013 in the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice). Since \$3,700.00 is the identical amount of monthly rent due under both Agreements, the tenant's ability to exercise the Option to Purchase under section 17 of the Option to Purchase Agreement would rely on his not being in default of his obligations under the Option to Purchase Agreement. Once the tenant was in default of his obligations, the tenant would no longer be able to exercise his Option to Purchase. The Option to Purchase Agreement also allows the tenant to exercise his Option to Purchase at any time in his tenancy. However, the tenant has not provided any evidence to demonstrate that he has exercised his Option to Purchase while he was continuing to make monthly payments in accordance with either of these Agreements.

Even if I were to accept the tenant's unsubstantiated claim that the Option to Purchase Agreement took precedence over the Agreement, the tenant has not supplied any evidence to demonstrate that he has either exercised that option or that he remains able to exercise that option by avoiding going into default regarding his obligations under the Option to Purchase Agreement. I find that an apparently unexercised option to purchase contained in an Option to Purchase Agreement that was itself in default provides little basis for obtaining a review hearing for alleged fraudulent withholding of a document from the landlords' written evidence package. Under these circumstances, I

find that the alleged fraud attributed to the landlords by the tenant would not have had any relevance to the original Arbitrator's consideration of the landlords' application.

For these reasons, I dismiss the tenant's application for review because I find that the tenant has failed to identify a basis on which, even if the submission in the application were accepted, the decision or order of the Arbitrator should be set aside or varied. In addition, I also dismiss the tenant's application because I do not find that he has identified sufficient evidence of a ground for review. In this regard, I do not find that the tenant has demonstrated that the documents submitted by the landlords in their application for dispute resolution were fraudulent. I also dismiss the tenant's application on the basis that he has not provided full particulars of the issues submitted for review and has failed to supply any evidence with respect to his payment of rent owed for April 2013, the issue that was before the original Arbitrator. The original decision and Orders are confirmed.

#### Decision

The final and binding decision Orders made on May 17, 2013 stand.

If the tenant believes that the Arbitrator exceeded her jurisdiction in making a decision on a tenancy that is not covered under the *Residential Tenancy Act*, his remedy would be by way of an application for judicial review to the Supreme Court of British Columbia.

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 11, 2013

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Residential Tenancy Branch