



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNSD

Introduction

The tenant has applied for review consideration of a decision dated May 31, 2013, granting the landlord a monetary order.

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 has applied on grounds 2 and 3 for the Review Consideration

Issues

1. Does the tenant have new and relevant evidence that was not available at the time of the original hearing?
2. Does the tenant have evidence the director's decision or order was obtained by fraud?

Facts and Analysis

The tenant writes in his application that he has new and relevant evidence in that the "I received a kind of receipt for my previous fee from my landlord after the hearing. I just attach a recording file which can prove that i had already noticed my new address before I left pervious unit. I thought that it was not necessary because my evidence paper could prove about it, however it could not. Therefore I am going to attach it.

[Reproduced as written.]

The Residential Tenancy Policy Guideline #24 defines new evidence as evidence that has come into existence since the dispute resolution hearing. It also includes evidence which the applicant could not have discovered with due diligence before the dispute resolution hearing.

Evidence in existence at the time of the original hearing which was not presented by the party will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through taking reasonable steps, have become aware of the evidence.

In this case, the tenant submits a document which appears was for March rent, the tenant with due diligence could have obtained this document prior to the hearing as the hearing was held on May 31, 2013. Therefore, I find the tenant has failed to establish the grounds of new evidence and relevant evidence.

The tenant writes in his application that the information the landlord submitted for the initial hearing was false, "According to the decision, in Background – My rental period was extended by landlord and I. But, as you see thought my first evidence. We both agreed that it was not true. I wrote down by hand, and landlord wrote his signature down on that paper. New address is also same."

[Reproduced as written.]

In this case, the tenant does not prove any submission on how the person who submitted the information knew it was false or how they think the false information was used to get the desired outcome as required.

In this case, the tenant argues that the testimony of the landlord was fraudulent. However, the tenant has not provided evidence that the decision was obtained by fraud. The arbitrator heard arguments from both parties on this issue in the hearing. This is not an opportunity for the tenant to reargue the case. Therefore, I find the tenant has failed to prove the decision or order was based on fraud.

Decision

Based on the above, the application and on a balance of probabilities, I find the tenant's application must be dismissed.

Therefore, I find the decision and orders made on May 31, 2013, stand and remain in full force and effect. The tenant's application for review is dismissed.

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 28, 2013

Residential Tenancy Branch