



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HYPHEN HOLDINGS
and [tenant name suppressed to protect privacy]

REVIEW CONSIDERATION DECISION

Dispute Codes CNR, RR

Basis for Review Consideration

Section 79(2) of the Residential Tenancy Act (Act) states that 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.

Applicant's Submission

The application for review consideration states the decision should be reviewed on the grounds of the applicant has evidence that the decision was obtained by fraud.

The applicant states the eviction Notice dated May 09, 2013 was made null and void on May 22, 2013 when the outstanding rent was paid and therefore must be set aside. The applicant further adds that he applied to dispute the eviction Notice dated June 02, 2013 but the application was "*erroneously refused and my right to an arbitration hearing was denied*"

Analysis

This ground applies where a party has evidence that the decision was obtained by fraud. Fraud may arise where a witness has deliberately misled the Arbitrator by the concealment of a material matter that is not known by the other party beforehand and is only discovered afterwards. 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 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.

On this ground for review, that the Arbitrator's decision was obtained by fraud, the applicant alleges that the eviction Notice dated May 09, 2013 should be set aside because he paid overdue rent and that the eviction Notice dated June 02 should be set aside because he applied in a timely manner to dispute it.

With respect to the matters the tenant asserts are fraudulent, they were not matters unknown to the tenant at the time of the original hearing. They were in existence and could have been submitted at the original hearing.

The tenant may disagree with the Arbitrator's findings of fact, but the tenant had an opportunity to respond to the landlord's evidence at the hearing.

In this case the Arbitrator found that the tenant received the Notice to end tenancy on May 10, 2013 and did not pay the outstanding rent or make application to dispute the Notice within the five day time frame which is on or before May 15, 2013. The tenant made application to dispute the Notice on May 17, 2013 and paid outstanding rent on May 22, 2013. Therefore pursuant to Section 46 to set aside the Notice to end a residential tenancy, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice.

The tenant also states that he made application to dispute the Notice dated June 02, 2013 in a timely manner but his application was refused. Records show that the tenant made application on June 11, 2013 to dispute the Notice that he received on June 03, 2013. His application was terminated based on the fact that he had made a similar application to dispute the Notice received on May 10, 2013 and a second application was not necessary.

The Arbitrator found that the Notice dated May 09, 2013 was valid and that the tenant did not make application to dispute it within the five day time frame. The arbitrator made no ruling based on the Notice to end tenancy dated June 02, 2013.

The tenant has not provided me with new evidence to support the allegation that the decision under review was obtained by fraud. The evidence filed with the application for review consists of documents which were filed with the original application and considered by the Arbitrator in the making of the decision. The application discloses insufficient evidence that the decision under review was obtained by fraud; and therefore, fails to satisfy the inherent burden of proof.

The *Act* also allows the director to dismiss an application for review if the application discloses no basis on which, the decision or order of the director should be set aside or varied. The applicant has failed to prove that a fraud was perpetrated and accordingly, I find that the application for review on this ground must fail.

This ground for review is not designed to provide parties a forum in which to rebut findings by the Arbitrator or to allege an error of fact or law. The applicants are free to apply for judicial review in the Supreme Court, which is the proper forum for bringing allegations of error.

Conclusion

I dismiss the Application for Review Consideration. The original decision and order made on June 17, 2013 are 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: July 04, 2013

Residential Tenancy Branch

