



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes

OPR, MNR, FF, MT, CNR, OLC

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 unable to attend and fraud.

In their application, the tenants state that they were unable to attend because "*we made the mistake on the time of the hearing*".

The tenants also state that they have evidence that the decision and order was obtained by fraud. The tenants have filed two receipts for rent and utilities paid on June 28, 2013. A third receipt filed is for the sum of both the amounts of the first two receipts. On this third receipt is written "*yesterday's receipts are void – I am not reinstating the tenancy.*"

The tenants state that the initial receipts imply that the tenancy was reinstated and therefore should not have ended.

Analysis

Unable to attend:

An arbitration hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. The Residential Tenancy Branch provides detailed instructions to the parties to enable them to attend the conference. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.

I find that the tenant has not proven that he had circumstances that were unanticipated and beyond his control which prevented him from attending the hearing. Accordingly, I find that the application for review on this ground must fail.

Fraud

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 landlord provided the initial receipts without noting that the tenancy was not being reinstated. The following day the landlord provided a receipt indicating that the tenancy was not reinstated.

In this case the Arbitrator based the decision Section 26 and 46 of the *Residential Tenancy Act*. Section 26 of the *Act* provides that tenants must pay rent when it is due. Section 46 of the *Act* provides that a landlord may issue a notice to end tenancy for unpaid rent on a day after the rent is due. The tenants may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, the Arbitrator found that the tenants did not pay the rent within five days of receiving the notice and their application to contest it was made late and therefore, under section 46(5) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice to end tenancy which was June 11, 2013.

Accordingly, even if I accept the tenant's evidence, it will not change the decision, because the payment of rent was not made within five days of receiving the notice to end tenancy.

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 orders made on July 05, 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 12, 2013

Residential Tenancy Branch

