



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

This is an application filed by the tenants for review of the July 2, 2013 decision and order of the arbitrator. The applicants applied for review on the ground the decision or order was obtained by fraud. They said in their application that the landlord submitted an altered tenancy agreement as evidence at the hearing on May 31, 2013. The tenants alleged that an advertisement for the rental unit constituted fraudulent evidence and they said that they: “strongly dispute” the landlord’s photographic evidence:

The tenants attached a copy of an annotated tenancy agreement and a copy of a January 18, 2012 e-mail from the landlord to their application for review. In the annotations made to the tenancy agreement, the tenants noted that the landlord had added their names and signatures to the copy agreement submitted by the landlords as evidence, whereas in the document submitted by the tenants, the landlords’ names and signatures were not present.

The tenants did not take exception to any of the terms of the tenancy agreement, but they said in their review application that:

The altered agreement was used to obtain the legal base for awarding the landlords’ loss of rental income.

Among other remarks the tenants also said that:

By knowingly ignoring the tenancy laws and Residential Tenancy Act rules and requirements: RTA Section 13 and 14 – Tenancy Agreement, RTA 23 and 24 – Condition Inspection, providing false evidence (re: ad, photos), destroying evidence (forwarding address left by tenants), the landlords created for themselves suitable “lawful” environment that was used as the base for their claims

The Residential Tenancy Policy Guideline #24 concerning Review applications contains the following passage:

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. 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.

The tenants have not alleged any new and material facts. The facts they related in the documents submitted on the review were known to the applicants at the time of the original hearing which proceeded on two days, May 31, 2013 and June 25, 2013. They had the opportunity to raise all of the matters alleged in the review during the hearing. The tenants' review application is an attempt to reargue matters that were before the Dispute Resolution Officer at the original hearing. The Arbitrator specifically addressed the tenants' concerns about photographs and the tenants' knowledge of the extent of the rental unit that was agreed to be rented to them in his decision. Concerning the alteration to the tenancy agreement, I do not consider that the landlords' additions were a material factor in the making of the decision under review; in any event this is not new evidence and the tenants had the opportunity to make arguments about the agreement at the original hearing. On the information provided by the tenants I am unable to conclude that the decision was obtained by fraud. The tenants' application for review on the ground that the DRO's decision was obtained by fraud is denied.

For the above reasons I dismiss the application for review. The original decision and order dated July 2, 2013 is 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 22, 2013

Residential Tenancy Branch

