



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

The original dispute resolution hearing on the cross applications of the tenant and the landlord was held on July 10, 2013, and a Decision was issued by another Arbitrator on July 10, 2013. In that Decision, the other Arbitrator made a finding that the tenant was entitled to a monetary award of \$1450 and that the landlord was entitled to a monetary award of \$1540.70; having found that the landlord's monetary award was greater than the tenant's monetary award, the Arbitrator set off the tenant's claim against the landlord's claim and granted the landlord a monetary order in the amount of \$90.70.

The tenant's monetary award was for a return of his security deposit, doubled, and the filing fee of \$50. The landlord's monetary award was for repair of damage to the rental unit, replacement of missing items, cleaning and carpet cleaning.

This is a request by the tenant for a review of that original Decision.

The tenant applied for a review on the ground that he has evidence that the Decision of July 10, 2013, was obtained by fraud, pursuant to Section 79(2) under the *Residential Tenancy Act*

Issues

Has the applicant for review provided sufficient evidence to support the indicated ground for review?

Facts and Background

In his application for review consideration to support his allegation that the Decision of the Director was obtained by fraud, the tenant submitted that the repairs made by the landlord were false, that he left the rental unit clean, less reasonable wear and tear, had the carpet cleaned, that he was not responsible for any repairs, and that the landlord was granted a favourable Decision based upon no written evidence. For instance, the tenant pointed out that there was no condition inspection report, either at the move-in or move-out.

The Decision of July 10, 2013, recites that the tenant disagreed that he was responsible for damages or for cleaning, as he contended that such damages or the need to clean and repair occurred after the tenancy ended.

The Decision also recited that the Arbitrator found it unlikely that the damages would occur in the 12 days between the end of the tenancy and the landlord's application for dispute resolution filing date.

Evidence the Decision was obtained by fraud-

In support of his application for review consideration, the tenant submitted email communication from friends, family members, or acquaintances attesting to their opinion that the fireplace and air conditioning unit were working during the tenancy as the rental unit was adequately warm or cool.

Analysis on Review

Residential Tenancy Policy Guideline #24 provides, among other things, that 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.

When claiming fraud, it is not enough to allege that the opposing party made false statements at the hearing, which were met by a counter-statement by the applicant for review, and the evidence as a whole was adjudicated upon by the Arbitrator.

In this case, I find the applicant/tenant provided evidence which was easily available for the dispute resolution hearing. In reviewing the applications of both parties, the landlord, whose application was filed on April 12, 2013, clearly outlined each specific claim, which included carpet cleaning, cleaning, repairs, and replacement of missing items.

As the hearing was not until July 10, 2013, the tenant had ample time to submit evidence in rebuttal of the landlord's claim; however the tenant submitted no documentary evidence in response. The email evidence supplied by the tenant was clearly available well in advance of the hearing.

A review of the original Decision shows that these same allegations of the tenant were duly taken into consideration by the Arbitrator in rendering the decision.

I therefore concluded that the tenant's submissions were before the Arbitrator at the hearing.

It is evident that the tenant has taken issue with the outcome of the hearing; however the fact that the applicant/tenant disagrees with the conclusion reached by the Arbitrator does not amount to fraud.

I therefore do not accept the applicant/tenant's claim that the Decision was obtained by fraud and I find that the tenant has not presented evidence to support his application.

Decision

Due to the above, I dismiss the tenant's application for review consideration and confirm the original Decision and monetary order of possession of July 10, 2013.

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: August 12, 2013

Residential Tenancy Branch