



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR OPR

Introduction

Division 2, Section 79(2) of the *Residential Tenancy Act* provides that a party to the dispute may apply for a review of a Decision or Order. The application must contain reasons to support one or more of the following 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 is applying for Review on grounds two and three of the grounds for review as set out above.

The Decision/Order under review is a decision and orders with respect to the Landlord's application for an Order of Possession and a Monetary Order for unpaid rent.

The Arbitrator found the Notice to End Tenancy for Unpaid Rent was valid and issued an Order of Possession to the Landlord and a Monetary Order in the amount of \$2,110.00.

On his Application for Review Consideration, the Tenant submits that he received the Decision and Orders on August 23, 2013.

Preliminary Matter

Section 80(a)(iii) of the Act requires an application for review consideration to be made within 2 days after the decision or order is received, if the decision or order relates to an order of possession. In this case, the Application was filed 4 days after receipt of the Decision and Orders, which is outside the time limitation under the Act. The Applicant has not requested an extension of time to apply for review, and therefore **I hereby confirm the Order of Possession issued August 23, 2013.**

The Applicant filed his Application for Review Consideration within the time frames set out in Section 80(c) of the Act, with respect to the Monetary Order.

Issue(s)

1. Has the Tenant shown that he has new and relevant evidence that was not available at the time of the original Hearing?
2. Has the Tenant supplied sufficient evidence to show that the Decision and Monetary Order were obtained by fraud?

Facts and Analysis

1. New and Relevant Evidence

Leave may be granted on this basis if the Tenant can prove that:

- he has evidence that was not available at the time of the Hearing;
- the evidence is new,
- the evidence is relevant to the matter before the Arbitrator,
- the evidence is credible, and
- the evidence would have had a material effect on the Decision.

Only when the Tenant has evidence which meets **all five criteria** will a Review be granted on this ground.

The Landlord is a society. The Tenant was an employee of the Landlord. On this ground for Review, the Tenant submits that he did not know that the person signing his “contract” had no authority to sign the agreement on behalf of the society, and that therefore his contract was not a valid contract. The Tenant indicated that the matter was challenged in the Supreme Court on August 23, 2013, which is the day after the Dispute Resolution Hearing took place.

The Tenant provided the following documents in support of his Application for Review Consideration:

- copy of a demand letter dated August 23, 2013, from the Landlord to the Tenant;
- copy of the Order of Possession dated August 22, 2013;
- copy of the Monetary Order dated August 22, 2013;

- copy of a letter dated August 27, 2013, from the Mosaic Immigrant Society of Canada;
- copy of a One Month Notice to End Tenancy for End of Employment; and
- copy of an Affidavit of a former President and Director of the Landlord, sworn August 27, 2013.

It is important to note that the tenancy ended pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent, because the Tenant did not pay rent for the months of July or August, 2013. It did not end pursuant to the One Month Notice to End Tenancy for End of Employment.

Prior to a hearing, parties must collect and supply all relevant documentary and digital evidence to the Residential Tenancy Branch and to the other party. “New” evidence includes evidence **that has come into existence since the arbitration hearing**. New evidence does not include evidence that could have been obtained before the hearing took place, such as affidavits that could have been sworn.

The Tenant’s written submissions are vague and difficult to comprehend. In his submissions, the Tenant did not provide any explanation as to whether he discovered before or after the Dispute Resolution Hearing that the matter was before the Supreme Court. Nor did the Tenant provide evidence that he is a party to the Supreme Court action. In addition, the Tenant did not define what he meant by “contract”. It is not clear if the Tenant was referring to the tenancy agreement or an employment contract, or both. The Act has jurisdiction over residential tenancies, but not employment contracts.

On this ground for Review, I find that the Tenant’s Application **discloses insufficient evidence** with respect to “new” evidence that was not available at the time of the Hearing; that it was new evidence; that it was relevant to the matter before the Arbitrator; or that it would have had a material effect on the Decision.

Therefore, I find that the Tenant has failed to meet all five grounds as set out above and the Application for Review on this ground must fail.

2. Fraud

This ground applies where a party has evidence that the Arbitrator’s decision was obtained by fraud. Fraud is the intentional “false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive.” Intentionally false testimony would constitute fraud, as would making changes to a document either to add false information or to remove information that would tend to

disprove one's case. 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.

Under this ground, the Tenant submits that the Landlord lied during the course of the Hearing and that he "got rid of [the Tenant] knowing well he has no authority to do so". The Tenant alleges that the person signing the "contract" on behalf of the Landlord did so without the Society's approval; however, the Tenant paid rent to the Society and lived in the rental property that belonged to the Society.

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.

I find that the Tenant's Application **discloses insufficient evidence** that the Decision under Review was obtained by fraud. I find that the Tenant has not provided any new or newly discovered material facts. It is not enough to allege that someone giving evidence for the other side made false statements at the Hearing. The Review process is not an opportunity to re-argue the case.

I further find that the Tenant's Application for Review Consideration discloses no basis on which, even if the submission in the Application were accepted, the Decision or Orders of the Arbitrator should be set aside or varied.

Conclusion

I dismiss the Application for Review Consideration and confirm the original Decision and Orders dated August 22, 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 28, 2013

Residential Tenancy Branch