



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

Introduction

This is an application for review consideration by the tenant regarding a decision rendered by the arbitrator on July 22, 2013, in which the landlord had successfully obtained orders for rent owed for July 2013 and an Order of Possession. The landlord's application was based on an undisputed Ten Day Notice to End Tenancy for Unpaid Rent that was served on the tenant.

Section 79(2) of the *Residential Tenancy Act* states that a party to the dispute may apply for a review of the decision. The application for review 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.** (my emphasis)

In this application, the tenant has applied for review under the ground of fraud

Issues

Has the Applicant provided sufficient evidence to support the grounds for review?

Facts and Analysis

In regard to the tenant's claim of fraud, the tenant stated that, prior to issuing the 10-Day Notice to End Tenancy for Unpaid Rent on July 2, 2013, the landlord had made a verbal agreement to permit the tenant to remain in the unit until July 15, 2013, after which the landlord apparently moved in and occupied the unit herself.

On the form, under the section titled,

"How do you think the false information was used to get the desired outcome?"

The tenant had written,

“By (landlord) not disclosing this information she then won the ‘vote’ to have me pay for a residence she was residing at during the month of July 2013 (the month the dispute is regarding!) (Reproduced as written)

I find that, when claiming fraud on the basis that the opposing party provided false information in their application, the person claiming fraud bears the burden of proof to prove that a fraud was committed.

The Residential Tenancy Guidelines state that “*Fraud*”, is intentional misrepresentation of a matter of fact, by false or misleading allegations, or by concealment of that which should be disclosed, which deceives and is intended to deceive.

In this instance, the tenant is claiming the existence of a verbal contract between the tenant and the landlord, which permitted the tenant to remain in the rental unit until July 15, 2013. The tenant did not specify whether or not it was part of the agreement that their rent for July was waived.

In support of the allegation of fraud, on the application for Review Consideration, the tenant stated they were told by a third party that the landlord,

“broke her lease at her rental” and”due to financial hardships would be moving back into (the rental unit)”

I find that the tenant did not provide sufficient proof of fraud perpetrated by the landlord. Section 26 of the Act provides that rent is due and payable as of the first day of each rental period. I find that the tenant has not proven the existence of a verbal contract that permitted the tenant not to pay rent that would otherwise be due on July 1, 2013.

I find that the tenant also failed to provide sufficient proof that the landlord moved back into the suite during the second half of July 2013. Even if the landlord did move into the suite after the eviction, this would not have functioned to relieve the tenant of the financial obligation under the Act to pay July rent as of the first day of July 2013.

Moreover, the landlord’s original application was made on July 9, 2013, prior to the alleged date that the tenant claims the landlord purportedly moved back into the suite. Therefore, at the time the application was made, the landlord could not have provided the information that the tenant is alleging was withheld because the event in question apparently occurred *after* the landlord had already submitted the application for a Direct Request Proceeding.

Finally, I find that the tenant had received a formal 10-Day Notice to End Tenancy for Unpaid Rent from the landlord dated July 2, 2013. I find that, if the tenant genuinely

disagreed with the Notice on the basis the landlord had allegedly agreed to waive rent for July 2013, the tenant had the opportunity, under the Act, to dispute it within 5 days by making an application to dispute the Notice. Had the tenant chosen to act, the tenant would have had the opportunity to provide their own evidence to make a case for cancelling the Notice. However, the tenant evidently chose not to dispute the Notice, and this fact permitted the landlord to apply for the Order of Possession and Monetary Order through the Direct Request process.

Given the above, I therefore do not find that the tenant has established that the arbitrator's decision was obtained by fraud. Accordingly, I hereby dismiss the tenant's application seeking a review of the July 22, 2013 decision and confirm the original decision and order of July 22, 2013.

Decision

The tenant's application for Review Consideration is not successful and is dismissed. The original decision of July 22, 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: August 08, 2013

Residential Tenancy Branch