



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNR MNDC

Introduction

On August 26, 2013 a review hearing was conducted to resolve a dispute between these parties. The tenants had applied for a Monetary Order for money owed or compensation for damage or loss and to cancel a Notice to End Tenancy for unpaid rent. The Arbitrator granted an Order of Possession in favour of the landlord and the tenant's application for a Monetary Order was dismissed with leave to reapply. The tenant KF has applied for a review of this Decision and Order

Division 2, Section 79(2) under the *Residential Tenancy Act* says 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.

Issues

The applicant relies on sections 79(2)(b) and (c) of the *Residential Tenancy Act* (the "Act"). The party has new and relevant evidence that was not available at the time of the original hearing. The party has evidence that the arbitrator's decision or order was obtained by fraud.

Facts and Analysis

New and Relevant Evidence

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

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

Only when the applicant has evidence which meets all five criteria will a review be granted on this ground.

On this ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, the applicant has submitted what appears to be a cheque book ledger showing rent payments made for March, 2013 of \$150.00 for April, 2013 of \$450.00 and for April, 2013 of \$450.00. The tenant submits that this evidence was not available at the time of the hearing as the other applicant MI could not locate this evidence as it had been packed away while MI was moving house in July and did not have time to locate it as the landlords served the tenants late with the Notice of Hearing letter on August 07, 2013.

The tenant has provided further evidence in the form of a DVD showing rent was paid for May and April and a cheque to show that rent was paid for August as the tenant submits that month was not part of the landlord's original claim as the Notice was dated May, 2013.

I am satisfied that the tenants evidence was not available at the time of the original hearing as the tenants did not have time to locate this due to the late service of the

Notice of Hearing letter. I am further satisfied that the evidence is relevant, credible and may have had a material effect on the decision of the Arbitrator. The tenant's request for a review on this ground is granted.

Decision Obtained by Fraud

This ground applies where a party has evidence that the 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".

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 committed fraud by saying that no rent had been paid since March and the Notice claims that the rent was in arrears for the amount of \$1,575.00 when the landlord knew that the rent for the month was only \$450.00. The tenant submits that the landlord claims he gave the tenant a receipt for February, 2013 but the landlord did not and has given no receipts when he was ordered to do so at a

hearing held in February, 2013. The tenant submits this shows the landlords credibility is lacking.

The tenant submits that the landlord claimed that no rent was paid for June and July when the landlord knew that the tenant did not have to pay rent for those months according to a previous decision that reduced the tenants rent from \$450.00 to NIL.

The tenant submits that the landlord knew that the rent had been reduced from \$850.00 to \$450.00 from a decision made in February and the rent for March was further reduced to \$150.00. Rent cheques were put in the landlord's mail slot but the landlord refused to cash them initially so as to create this situation where the landlord could falsely claim the tenant was in arrears.

The tenant submits that the landlord knew this information was false as the landlord claimed rent of \$1,575.00 for each month since February, 2013. The landlord also claimed no rent was paid for February when it was and the landlord didn't cash the cheque to create a situation of alleged arrears so the landlord would not have to comply with the RTB orders for necessary emergency and non emergency repairs to the unit and laundry room facilities.

The tenant also submits that the landlord obtained a review hearing by giving false information about being served the tenants Notice of Hearing letter and subsequent hearing decision in which the tenants rent was reduced to NIL. The tenant submits the landlord claimed his mail was tampered with however the tenant submits he has never tampered with the landlords mail and the police file number provided by the landlord in connection with this does not explain what that file number was for. The tenant submits that he has no reason to steal or tamper with the landlords mail as each decision rendered since February, 2013 has been in the tenants favour.

The tenant submits that the landlord also stated that he had no knowledge of the hearing held on May 30, 2013 until July 15, 2013 when in fact the landlord knew at least

by June 18, 2013 because another hearing took place. The Arbitrator fully explained to the landlord and the landlord was aware of by the time of the decision.

It is my decision that the application discloses sufficient evidence that there is a possibility that the decision under review was obtained by fraud; and therefore, the tenant satisfies the inherent burden of proof. The tenant's submissions raise sufficient questions that the landlord gave false information at the review hearing that resulted in an Order of Possession being issued to the landlord. Consequently, the tenants request for a review on this ground is also granted.

Decision

Notices of the hearing are included with this review consideration decision for the **tenant to serve to the landlord within 3 days of receipt of this decision.**

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing; including a copy of the Application for Review consideration that was submitted by the tenant.

Fact sheets are available at

<http://www.rto.gov.bc.ca/content/publications/factSheets.aspx> that explain evidence and service requirements. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020

Victoria: 250-387-1602

Elsewhere in BC: 1-800-665-8779

The decision and Order made on August 26, 2013 are suspended until the review has been completed and a decision given to the parties.

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: September 06, 2013