



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIRI ENTERPRISES (1982) LTD.
and [tenant name suppressed to protect privacy]

REVIEW CONSIDERATION DECISION

Dispute Codes OPR, MNR

Basis for Review Consideration

Section 79(2) of the Residential Tenancy Act (Act) states that 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.

Applicant's Submission

The application for review consideration states the decision should be reviewed on the ground of the decision and order was obtained by fraud.

The applicant states that on July 21, 2013 she received a verbal offer from the landlord by telephone. The landlord offered the tenant two months of free rent from August 01 to October 01, if the tenant agreed to move out. The tenant states that the landlord did not stand by her offer and on August 02, 2013, issued a ten day notice to end tenancy for non payment of rent. The tenant filed statements from two witnesses who confirm that the tenant received this offer by telephone from the landlord.

Analysis

This ground applies where a party has evidence that the Dispute Resolution Officer'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”.

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 notice to end tenancy was left in the tenant's mail box on August 2, 2013. Service in this manner is deemed to be effected 3 days after leaving the document, in this case August 5, 2013. The tenant did not dispute the notice nor did the tenant pay the outstanding rent within five days of the receipt of the notice to end tenancy. The tenant had the opportunity to dispute the notice on the grounds that the landlord had made her an offer of a rent free stay, but failed to so.

The Arbitrator reviewed all the documents and based her decision on the fact that the tenant did not dispute the notice to end tenancy and did not pay the outstanding rent. I find that even if I accept the tenant's testimony that the landlord made a verbal offer to the tenant, the decision would not change because it was made based on the notice to end tenancy served on the tenant. The applicant has failed to prove that the arbitrator's decision was obtained by fraud. Therefore, I find that the application for review on this ground must fail.

Conclusion

I dismiss the Application for Review Consideration. The original decision and order(s) made on August 26, 2013 are 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: September 11, 2013

Residential Tenancy Branch

