



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes MNR, FF

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 that the tenant has information that the decision and order was obtained by fraud.

In the application for review, the tenant initially also applied for review on the grounds of unable to attend, but crossed that out. The applicant's reasons for the application for review are entered into the box under "unable to attend" and the reader is directed to this box for information regarding the alleged fraud.

The tenant states that the decision is not "viable" because the tenant had made prior application and the decision was granted in her favour. The decision that the tenant is referring to is dated February 19, 2013. The landlord applied for a review of the decision and her application was denied.

The tenant states that based on the decision dated February 19, 2013 which was in her favour and the subsequent dismissal of the review application by the landlord, she

thought that the hearing on September 03, 2013 was cancelled and therefore she did not attend the hearing.

Analysis

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 parties attended a hearing on February 19, 2013, that was convened to hear the tenant's application for the return of double the security deposit. The Arbitrator found that the tenant had not provided the landlord with a forwarding address and the date of the hearing – February 19, 2013, was designated as the date the landlord was provided with the forwarding address of the tenant. The landlord was ordered to return the deposit to the tenant or to make application to retain a portion or all of the deposit within 15 days of receipt of the decision.

After an application by the landlord for review of the decision was dismissed, the landlord made application on May 27, 2013 for loss of income for the month of July 2012. The hearing took place on September 03, 2013 and the landlord was granted a monetary order for the loss of income. The landlord still had the tenant's security deposit in her possession and therefore the Arbitrator offset the amount of the security deposit from the established claim of the landlord, and issued the landlord a monetary order for the net amount.

Based on the evidence in front of me, I find that the notice of hearing was served on the tenant by registered mail on May 28, 2013. The tenant was deemed to have been served the notice of hearing, as indicated in the Arbitrator's decision. The tenant was aware that the landlord intended to make a claim for loss of income for July 2012 but chose not to attend the hearing. The tenant's reason for not attending is that she thought she "won" the previous arbitration and that this one was cancelled.

The Arbitrator made a decision based on section 7(2) of the *Residential Tenancy Act* and awarded the landlord the loss of income that she had applied for. Even if the tenant had attended the hearing, I find that her testimony regarding the decision from the

previous hearing being in her favour, would not have changed the decision of the Arbitrator.

Section 81(1) (b) (iii) of the Act allows the director to dismiss an application for review if the application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied

Conclusion

I dismiss the Application for Review Consideration. The original decision and order made on September 03, 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 20, 2013

Residential Tenancy Branch

