



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

Introduction

The respondent tenant is alleging that a Review of the decision rendered on the landlord's Direct Request application on October 21, 2013 was based on fraud.

In the hearing, the landlord had been seeking an Order of Possession and Monetary Order, for rent arrears, based on a Ten Day Notice to End Tenancy for Unpaid Rent.

The landlord was successful in being granted an Order of Possession based on the undisputed Ten Day Notice to End Tenancy for Unpaid Rent, dated October 2, 2013. However, the portion of the landlord's application seeking monetary compensation was ordered to be reconvened in and will be heard at a participatory hearing.

The tenant has requested that the decision issued on October 21, 2013, be reviewed on the ground that the arbitrator's decision was obtained by fraud.

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.** (my emphasis)

Issues

Has the tenant proven that a fraud was committed that affected the hearing decision?

Facts and Analysis

The burden of proof is on the Applicant to prove the criteria for a review of the decision or order has been met under the Act.

In this application, the tenant has provided proof that the arbitrator's finding concluding that the male tenant did not sign the tenancy agreement was not true, based on the documents themselves and the tenant provided a copy of the tenancy agreement showing that the male tenant *did* indeed sign the agreement.

The tenant apparently believes that this observation made by the arbitrator would qualify as fraud on the part of the landlord. However, I find that the evidence originally submitted included in the file, by the landlord, in support of their original application, did show this information correctly. In fact, I find that the landlord had provided a copy of exactly the same tenancy agreement clearly showing the male tenant's signature on it. I find that the landlord did not provide any fraudulent information.

It is apparent that the arbitrator may have made the finding concluding that only the female tenant had signed the agreement in error. If so, I find that the parties are at liberty to request a correction under section 78 of the Act. I do not find that the Direct Request Decision of October 21, 2013 was obtained by fraud because no false information was ever furnished by the landlord.

In any case, I find that the corrected information would not, in any way, have affected the arbitrator's decision to grant the Order of Possession dated October 21, 2013, because as the Order of Possession is always issued against all occupants of the rental unit, based on unpaid rent and based on the fact that the 10-Day Notice to End Tenancy for Unpaid Rent was never disputed by either of the tenants within the 5-day deadline under the Act. The Order of Possession is legally enforceable against both the male and female tenant, regardless of who signed the tenancy agreement.

Moreover, a second hearing has already been scheduled to be reconvened, by the original arbitrator to hear the issue of the monetary claims against the tenants. No finding has been rendered yet with respect to who will be named in the monetary order, if any is issued at the subsequent, reconvened, hearing. During the reconvened hearing, any errors or clarifications can be brought up and addressed.

Based on the evidence, I find that the tenant's position that the arbitrator's decision was obtained by fraud, was not sufficiently supported by the evidence provided. Therefore, I am not able to find this to be a valid ground upon which to justify a review.

Section 81(1) of the Act states that the arbitrator may dismiss or refuse to consider the application, if the application does not give full particulars of the issues submitted for

review or of the evidence on which the applicant intends to rely, if the application does not disclose sufficient evidence of a ground for the review, if the application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the arbitrator should be set aside or varied, or if the application is frivolous or an abuse of process.

Pursuant to Section 81(b) (ii) of the Residential Tenancy Act, I must dismiss the application for review on the basis that it does not disclose sufficient ground for a review.

The applicant has not succeeded in demonstrating that the evidence contained in this application would meet the criteria for granting a review under the grounds cited. I have determined that there is no validity to the claim that the decision was obtained by fraud, and I hereby dismiss this Review consideration application without leave.

Therefore the hearing decision and the order of possession, rendered on October 21, 2013, still stands.

CONCLUSION

The landlord's request for a Review is not successful and the application is dismissed without leave.

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: October 29, 2013

Residential Tenancy Branch