



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: CNC

Introduction

On September 18, 2013 a hearing was conducted to resolve a dispute between these parties. The tenant had applied to cancel two One Month Notices to End Tenancy for cause. The landlord orally requested an Order of Possession at the hearing. The Arbitrator upheld the tenant's application. The landlord has applied for a review of this Decision.

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 submits that the tenant's representative had not sent the landlord the documents in time. Moreover that they tossed the documents in the landlord's door slot with only two working days before the hearing. The landlord submits that the same day the landlord received the Decision the landlord also received by registered mail a letter from the tenant with all the necessary stamps from Canada Post.

The landlord submits that the tenant's representatives never sent the documents necessary for the hearing by registered mail and they had been tossed in the landlords door slot and should have been sent by registered mail. The landlord also submits that he never had an announcement from Canada Post that the landlord had been sent anything by the tenant or the tenant's representatives. The documents were left in the landlord's door slot on September 12 and the hearing was September 17. Therefore the tenant has not complied with the normal rules involving the number of necessary

working days before a hearing and the tenants documents must be excluded or not considered.

The landlord has provided the envelope which contained the documents sent from the tenant.

When a landlord is applying for a review under this ground the landlord must provide any new or relevant evidence that was not available at the time of the original hearing. The landlord has provided a copy of an envelope which the landlord states was put in the landlords door slot on September 1, 2013. The landlord states that this was served late to the landlord as the hearing was held on September 17, 2013. The landlord does not make clear in his submission for review that the documents the tenant posted in the landlords mail slot are the tenant's application and Notice of hearing or evidence. If it just evidence then when documents are posted in the landlords door it is considered to be received three days before a hearing and therefore this evidence was served on time. Furthermore I cannot determine that this is new or relevant evidence that was not available at the time of the original hearing as the landlord would have had this in his possession at the time and could have argued this at the hearing. Consequently I find that the application for review on this ground must fail.

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 signing the landlord's signature to collect the registered mail sent by the tenants or the tenant's representative. The landlord submits that there is no stamp on the envelope and the mail receipt has a forged signature. The tenant later sent a registered mail later which had the necessary stamps. The landlord submits that all the documents sent by the tenant should not be considered and the landlord asks for an Order of Possession for October 31, 2013. The landlord submits that the tenant's representatives avoided indicating how they served the documents to the landlord and they lied that the apartment of the tenants might be clean which it was not and that is why the apartment has been treated again for bedbugs and cockroaches. The landlord has provided a copy of his signature which the landlord submits does not match that on the registered mail signature box.

I am uncertain from the landlord's submissions concerning the 'real' registered mail sent by the tenant and the envelope without stamps has any connection to the landlord's allegations of fraud. The landlord attended the hearing and had the opportunity at the hearing to dispute service of the hearing documents or other evidence by the tenant at that hearing.

Concerning the landlord's allegations that his signature has been forged on the registered mail documents. I am of the understanding that if a person collects registered

mail at a Canada Post Office then that person must provide identification showing the same address as the mail recipient and sign for the documents. I am unsure therefore how anyone else not living at the landlords address could therefore sign for the registered mail. The landlord submits that the tenant's representatives at the hearing lied that the apartment was clean however the landlord has provided no evidence to support this in this application for review.

The application discloses insufficient evidence that the decision under review was obtained by fraud; and therefore, fails to satisfy the inherent burden of proof. The applicant has failed to prove that a fraud was perpetrated and accordingly, I find that the application for review on this ground must fail. This ground for review is not designed to provide parties a forum in which to rebut findings by the Arbitrator or to allege an error of fact or law.

Decision

The landlord's application for review is dismissed

The decision made on September 18, 2013 stands.

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 07, 2013

Residential Tenancy Branch