



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78, as amended.

Introduction

An original dispute resolution hearing on the cross applications of the landlord and the tenants was held on September 11, 2013, and a Decision was issued on September 23, 2013, granting the tenants' monetary compensation for \$575, granting the landlord monetary compensation for \$150, setting-off the landlord's monetary award against the tenants' monetary award, and thereby granting the tenants a monetary order for \$425.

This is a request by the landlord for a review consideration of that original Decision.

The landlord applied for a review consideration on the grounds that she has new and relevant evidence that was not available at the time of the original hearing and that she has evidence that the decision was obtained by fraud, pursuant to Section 79(2) under the *Residential Tenancy Act*.

Issues

Has the applicant for review provided sufficient evidence to support the indicated grounds for review?

Facts and Background

In the decision of September 23, 2013, the original Arbitrator granted part of the tenants' monetary claim and part of the landlord's monetary claim, resulting in the tenants being granted a monetary order due to their monetary award being greater.

In the Decision, the original Arbitrator stated that the landlord's documentary evidence was not considered as the landlord did not serve this evidence to the tenants. This fact was not in dispute as it was confirmed by the landlord.

The original Arbitrator dismissed the monetary claim of the landlord for repair for the garburetor and the drawer due to insufficient evidence, such as with receipts or the condition inspection report.

The original Arbitrator also dismissed the landlord's monetary claim for unpaid rent, late fees, and loss of revenue due to insufficient evidence, specifically mentioning that a tenancy agreement was not provided into evidence by the landlord.

Issue #1-The landlord has new and relevant evidence that was not available at the time of the original hearing

With her application for review consideration, the landlord attached copies written tenancy agreements signed by a subsequent tenant, dated June 12, 2013, another written tenancy agreement signed by an unknown party, dated August 16, 2013, and two other written tenancy agreements signed by unknown parties, dated July 1, 2007, and July 1, 2008, respectively, in support of her claim that she had new and relevant evidence not available at the time of the hearing.

The landlord contended that these documents were not submitted as she did not realize they were important until after the hearing was finished.

Also in support of this allegation, the landlord simply restated language from the original decision; more specifically, the landlord reiterated that the original Arbitrator did not consider the evidence because it was not submitted to the other party.

Issue #2- The landlord has new and relevant evidence and that the decision was obtained by fraud-

With her application for review consideration, the landlord claimed that the tenant did not give notice to end the tenancy by email, and that this was false. The landlord also claimed that the tenant knew this information was false.

The landlord also submitted with her application for review consideration her request for monetary compensation for damage to the rental unit and loss of rent revenue, as contained in her original application for dispute resolution.

Analysis on Review

New and relevant evidence that was not available at the time of the original hearing

Guidance in determining whether evidence is considered new and relevant falls under Residential Tenancy Branch Policy Guideline #24.

Under this section and Dispute Resolution Rules of Procedure (Rules) 3.4 and 3.5, prior to a hearing, parties must collect and supply all relevant evidence to the hearing and send to the Residential Tenancy Branch ("RTB") and the other party. Evidence refers to any oral statement, document or thing that is introduced to prove or disprove a fact in a dispute resolution hearing.

New evidence includes evidence that has come into existence since the dispute resolution hearing and does not include evidence that could have been obtained, before the hearing took place.

All evidence in support of her application for review consideration submitted by the landlord was dated prior to the hearing on September 11, 2013, and was not considered by the original Arbitrator as it was not served on the other party as required.

I therefore find the applicant/landlord has submitted insufficient evidence to support her application for review consideration. An application for review is not an opportunity to submit evidence the applicant failed to supply in accordance with the Rules in advance of the hearing.

I find that the landlord was dissatisfied with the results of the original hearing and was attempting to change the outcome.

Evidence the Decision was obtained by fraud-

Residential Tenancy Policy Guideline #24 provides, among other things, that 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.

When claiming fraud, it is not enough to allege that the opposing party made false statements at the hearing, which were met by a counter-statement by the applicant for review, and the evidence as a whole was adjudicated upon by the Arbitrator.

A review of the original Decision shows that these same allegations of the landlord were duly taken into consideration by the Arbitrator in rendering the decision.

I find that the written arguments of the landlord failed to show that the Decision was obtained by fraud, but rather shows that the landlord disagreed with the Decision and was attempting to re-argue the case.

Decision

Due to the above, I dismiss the landlord's application for review and confirm the original Decision and monetary order in favour of the tenants both dated September 23, 2013.

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 11, 2013

Residential Tenancy Branch