



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR OPR

Introduction

This is an application by the tenant for a review of a decision of the director dated October 23, 2013.

The tenant applied for a review on the grounds that he has new and relevant evidence that was not available at the time of the original hearing; and he has evidence that the director's decision or order was obtained by fraud.

Issues

Has the tenant provided sufficient evidence to support one of the indicated grounds for review?

Facts and Analysis

Original Hearing and Decision

The original hearing first convened on October 11, 2013, pursuant to the landlord's application for an order of possession and a monetary order. The basis of the application for an order of possession was a notice to end tenancy for unpaid rent served on the tenant on August 25, 2013 for unpaid rent of \$750 due on August 1, 2013. The landlord claimed a total of \$3500 in unpaid rent, comprised of \$750 per month for the months of January, August, September and October 2013, as well as \$250 that the tenant failed to pay in February 2013.

The landlord and the tenant attended the teleconference hearing on October 11, 2013. The arbitrator noted in his decision that during the hearing that neither party had provided a copy of the notice to end tenancy and neither party could provide details as to the content of the notice. The arbitrator further noted that it was clear from testimony that the tenant had received the notice. On that basis, the arbitrator adjourned the hearing to allow either or both parties to submit a copy of the notice. The arbitrator also

asked the tenant to resubmit his evidence focusing in on details related only to the current tenancy.

The hearing reconvened on October 23, 2013. On that date, the landlord attended hearing and the conference call remained open from 9:30 a.m. to 9:53 a.m. but the tenant did not call in during that time. In the absence of the tenant, the arbitrator proceeded to address the landlord's application. The arbitrator considered the evidence, including the tenant's written submission and his testimony in the original hearing, and determined that the landlord was entitled to an order of possession and a monetary order for unpaid rent.

Tenant's Submissions

In the application for review, the tenant stated that he failed to attend the reconvened hearing because he suffered stress and exhaustion, brought about by a combination of harassing behavior of the landlord and the need to "spend every waking moment focused on these legal matters." The tenant stated that he confused the days and missed the reconvened hearing.

It is not clear from the tenant's application for review what new and relevant evidence he wished to submit. The tenant submitted a lengthy written submission explaining what his position was in regard to the notice to end tenancy, as well as reference to other issues related to the current and the previous tenancies. This submission appears to be a summary of the evidence that the tenant would have provided at the reconvened hearing.

In regard to the claim of fraud, the tenant indicated in his submission that it was not until he received the decision of October 23, 2013 that he realized he had not been served the second page of the notice to end tenancy. The tenant stated that the landlord committed fraud in January 2013 by not giving the tenant cheques totalling \$750, which the tenant could have endorsed to pay rent. The tenant also believed that the arbitrator ruled in the favour of the landlord due to the tenant's "lack of adherence," and the arbitrator had made a decision before even reconvening the hearing.

Analysis on Review

The tenant did not apply for a review on the ground that he was unable to attend the reconvened hearing due to circumstances that could not have been anticipated and were beyond his control. However, in his application for review the tenant wrote extensively about why he was unable to attend the reconvened hearing, and he implied

that his failure to attend the reconvened hearing may have led the arbitrator to unfairly rule in favour of the landlord. The tenant was notified of the date and time for the reconvened hearing, and he did not indicate that there was any unanticipated circumstance beyond his control that prevented him from attending the reconvened hearing. The tenant did not provide any medical evidence to establish that he suffered an unanticipated medical emergency that prevented him from attending the reconvened hearing. Even if the tenant had applied for review under this ground, I would have found, based on the above, that the tenant would not be entitled to a review on the ground of failure to attend.

In regard to the ground of new and relevant evidence, I find that the tenant is merely attempting to re-argue the same issues he raised or ought to have raised in the original hearing. I therefore find that the tenant is not entitled to a review on the ground of new and relevant evidence.

In regard to the ground of fraud, I find that the tenant's submissions in this application for review consideration merely consist of arguments that the tenant would have had the opportunity to present during the hearing. It is clear from the decision dated October 23, 2013 that the arbitrator considered the evidence of the landlord and the tenant, and the arbitrator preferred the evidence of the landlord over that of the tenant. The fact that the tenant disagrees with the conclusion reached by the arbitrator does not amount to fraud. I therefore do not accept the tenant's claim that the arbitrator's decision was obtained by fraud.

I wish to specifically address the the tenant's claim that he had not been served with the second page of the notice to end tenancy, and he was therefore unaware that he could dispute the notice. The arbitrator indicated in the October 23, 2013 decision that on the first hearing date the tenant acknowledged that he received the notice; further, on that date the arbitrator raised the issue of whether the tenant had applied to dispute the notice, and the tenant confirmed this. The tenant did not indicate that he had not received the second page of the notice at that time or any other time prior to his application for review. I do not find it credible that the tenant would not have raised this issue before applying for a review, particularly as the first page of the notice indicates, in large, bold, highlighted text, that a tenant may be evicted if they do not pay the outstanding rent or make an application within five days.

Decision

I dismiss the application for review and confirm the original decision and orders of October 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: November 5, 2013

Residential Tenancy Branch