



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR MNSD OPR

Introduction

On September 17 and October 18, 2013, a hearing was conducted to resolve a dispute between these two parties. Both parties had made application. Both parties were partially successful with their respective applications. The landlord has applied for a review of this Decision and Order.

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 meters readers were on strike and the landlord now has accurate amounts for the gas and electric. The landlord submits that the unit was advertised for September rental and an advert was placed on the internet classifieds on August 13 to August 31, 2013. This advert notes the square footage of 2200. The landlord submits that he has never in 20 years rented the garage. The landlord submits that the RCMP report of August 18, 2013 shows a fraudulent statement for the document. The landlord submits that the pool maintenance and security bill was received on October 07, 2013. The landlord also submits an allegedly fraudulent notice backdated yet taped to the door on August 07.

The landlord has provided evidence that the landlord claims is new and relevant in the form of utility bills; advertisements for rental of the unit; e-mail messages from prospective tenants; Invoice for pool maintenance and security; receipts from Wal-Mart for pool chemicals; a police report; e-mails between the parties; signed witness statement concerning the tenants taking pictures of the witnesses house; and a copy of the tenants notice to end tenancy.

In Order for the applicant to be successful the evidence provided must meet all five criteria in order for a review on this ground to be granted. I am not satisfied that all the evidence provided meets these five criteria, The landlord had provided late evidence for the hearing for which the Arbitrator concludes that this evidence has not been reviewed or considered because the landlord was given instruction at the adjourned hearing that no further evidence would be excepted as it was not received five days prior to the original hearing, pursuant to the rules of

procedure concerning evidence. However the landlord still sent additional evidence in contrary to this instruction.

The landlord's evidence provided for this review in the form of some e-mails and the police report is part of this evidence that the landlord was instructed could not be considered. Consequently, it was not new evidence that was not available at the time of the original hearing. The internet advertisements for rental of the unit; the pool and security invoice; and the tenants' notice could all have been made available at the original hearing had the landlord used due diligence to obtain this evidence. Therefore none of this evidence can be considered new evidence that was not available at the original hearing.

The matter of the utility bills; while the landlord submits that the meter readers were on strike at the time and the meters were not accurately read, the landlord has provided no evidence to show when the meter readers were on strike or that the bills could not be obtained prior to the hearing. Consequently, the landlord's 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 RCMP file describes a suspicious landlord and that these statements were false. The landlord contends that he never came to the unit daily and never used the bathroom. The landlord had e-mailed the tenants notifying them that he was coming to take photos of the meters. The tenants had removed their car down the street which was suspicious. The landlord submits that the tenants knew their information was false as they gave a false story to the RCMP for documenting purposes. The landlord only came to the house to do extra work on the pool furnace and to empty the garage; the landlord did stay away from the house after completing the extra items requested on June 11, 2013; so how is it that they could not serve the landlord notice because he stayed away.

The landlord submits that the false information was used to get the desired outcome as the tenants lied about the landlord using the bathroom 40 times. The tenants claimed intimidation by the landlord on the police report but the report mentions that the tenants BA got angry when questioned by the RCMP and then got angrier. The tenants located the landlord's photographer and photographed there person and their cars which the landlord guesses in trying to terrify them. The landlord submits that 90 percent of the tenants' evidence to be fraudulent.

I have reviewed the evidence for the hearing; the landlord did attend the hearing and could have raised these issues to the Arbitrator at the hearing. The application discloses insufficient evidence that the decision under review was obtained by fraud. The party alleging fraud has not proven new and material facts, or newly discovered and material facts, which were not known to the landlord at the time of the hearing, and which were not before the Arbitrator. Consequently the landlord fails to satisfy the inherent burden of proof. The landlord 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 attempt to reargue the matters heard at the hearing.

Decision

The landlord's application for review is dismissed.

The decision made on November 04, 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: November 26, 2013

Residential Tenancy Branch