



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Review Consideration Decision

Dispute Codes: FF MNDC MNSD

Introduction

On October 22, 2013, a hearing was conducted to resolve a dispute between these two parties. The tenant had applied for a monetary order for compensation, for the return of the security deposit and for the recovery of the filing fee. The landlord attended the hearing. The Arbitrator granted a portion of 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.

The applicant relies on section 79(2)(c) of the *Residential Tenancy Act* (the "Act") which provides that the director may grant leave for review if a party has evidence that the arbitrator's decision or order was obtained by fraud. The applicant also applied for an extension of time to file the application for review.

Issues

Does the landlord have exceptional circumstances that prevented him from applying for a review within the 15 day time frame? Does the landlord have evidence that the Arbitrator's decision was obtained by fraud?

Facts and Analysis

This is an application for review filed on November 21, 2013 by the landlord for the review of a decision dated October 28, 2013 and received by the applicant for review on November 05, 2013. The applicant applied for an extension of time to file the application for review.

The *Act* specifically provides a fifteen day time-frame in which a party can apply for review with respect to an application of this nature. In this case, the applicant applied approximately 16 days after having received the decision.

The applicant stated that the reason he was unable to apply for review within the required time frame was that a key document in the tenant's handwriting is in the process of being analyzed for its authenticity. The landlord attached an email from the company that is conducting the investigation which indicates that the investigation is in progress. Since the landlord has made this application on the 16th day which is one day late and because he is in the process of conducting an investigation, I grant him an extension of time to make this application.

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 tenant committed fraud by providing false testimony. The applicant has listed the statements that he alleges are false and they are as follows:

1. Description of the incident regarding the "gas emergency"
2. Tenant's claim that rent receipts were refused by the landlord
3. Date of entry into the rental unit
4. Claim of \$100.00 which was already settled by a rent reduction
5. Fraudulent invoice
6. Tenant's statements about being forced to replace flooring

The landlord also states that he finds it difficult to understand why the tenant was awarded double the security deposit when the damage caused by the tenant far exceeded the amount of the damage deposit.

The decision explains that the tenant was awarded double the security deposit in keeping with s.38 of the *Residential Tenancy Act*.

With respect to the matters the landlord asserts are fraudulent, they were not matters unknown to the landlord at the time of the original hearing. They were in existence and could have been submitted at the original hearing. The landlord may disagree with the Arbitrator's findings of fact, but had an opportunity to respond to the tenant's evidence at the hearing.

The tenant has not provided me with new evidence to support the allegation that the decision under review was obtained by fraud. The evidence filed with the application for review consists mostly of copies of email correspondence, rent receipts and invoices.

This evidence was in existence at the time of the hearing. The landlord has not proven any new or newly discovered material facts and how that evidence could have been a significant factor in the making of the decision. The application discloses insufficient evidence that the decision under review was obtained by fraud; and therefore, fails to satisfy the inherent burden of proof.

It is not enough to allege that someone giving evidence for the other side made false statements at the hearing, which were met by a counter-statement by the party applying, and the whole evidence adjudicated upon by the Arbitrator. A review hearing will likely not be granted where an Arbitrator prefers the evidence of the other side over the evidence of the party applying.

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. The applicants are free to apply for judicial review in the Supreme Court, which is the proper forum for bringing allegations of error.

The landlord is also at liberty to file his own application for the cost of repairs and/or to file an application for a correction to the award of \$100.00 to the tenant that was, according to the landlord, deducted off rent during the tenancy.

Decision

The decision made on October 28, 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 29, 2013

Residential Tenancy Branch