



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Review Consideration Decision

Dispute Codes: FF MND MNDC MNSD

Introduction

This is an application by the Landlord for a review of the decision of an Arbitrator dated November 12, 2013. The original hearing had applications from both the Landlord and the Tenant. The Landlord's application was for monetary compensation for damage and loss and to retain the Tenant's security deposit as partial payment for damage to the unit. The Tenant's application was to have her security deposit returned less \$100.00 the Tenant agreed to pay in damages.

The Landlord's application was dismissed as the Arbitrator found the Landlord did not meet the burden proof required to show damage and to prove a loss. The Arbitrator mentioned the Landlord did not do condition inspection reports therefore there was no evidence that proved the damage the Landlord was claiming the Tenant did. As a result the Landlord's application was dismissed without leave to reapply.

The Arbitrator awarded the Tenant double the security deposit in the amount of \$1,500.00 less the \$100.00 of damages that the Tenant agreed to plus the filing fee of \$50.00, for a total monetary order of \$1,450.00.

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 Landlord's application for a review of the previous Arbitrator's decision is on the grounds that the Tenant obtained the Order with fraudulent information. Is the Landlord's application justified?

Facts and Analysis

The Landlord applied for a review on the basis that the Tenant did not tell the truth about the damaged countertops, that she did not request a move out condition inspection and that the yard was not in good condition as the Tenant said in the hearing. The Landlord submitted a summary of his thoughts on these points. As well the Landlord said his witness could not join the hearing and the witness had evidence that shows the Tenant was lying. The Landlord included a letter from the witness with the review hearing. The Witness says in her letter that the Tenant did not keep the lawn and yard in good condition, that the Tenant told her she bought a carpet to cover the scratches in the floor and on one occasion the Tenant had a fire in the kitchen that caused a lot of smoke. The Witness letter submitted by the Landlord is not dated but is signed and it is not notarized.

The Landlord said in his review application that based on the information he submitted he believes that this proves the Tenant obtained the decision and Order by fraud.

The evidence that the Landlord submitted for the review application is his statements rearguing the case and the witness letter that is to replace the Witness' testimony that did not happen, because she was unavailable for the hearing. I find the Landlord's "Attachment of dishonest and honest testimony" is only rearguing the case and there is

no corroborative evidence in the Landlord's submission to support the summary. As well the Witness letter is not dated and is not notarized therefore I do not accept it as credible evidence. Consequently the Landlord is rearguing the same information presented at the hearing and it is again just the Landlord's word against that of the Tenant's with respect to the condition of the rental unit. I find the Landlord has not met the burden of proof with the evidence that he submitted with his review application. The Landlord has not proven the Tenant obtained the decision and Order by fraud. I find the Landlord has not provided satisfactory evidence that established grounds for a review of the previous Decision of the Arbitrator dated November 12, 2013.

Consequently I dismiss the Landlord's application for review without leave to reapply.

Decision

In considering the evidence of the Landlord's review application, I find that the Landlord has not established grounds to be granted a review hearing. Consequently the Landlord's application for review is dismissed without leave to reapply and the Decision and Orders of the Arbitrator dated November 12, 2013 stand in full effect.

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: December 09, 2013

Residential Tenancy Branch