



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNSD

Introduction

The original dispute resolution hearing on the application of the tenant was held on November 5, 2013, and a decision was issued on November 6, 2013, granting the tenant's application for a monetary order comprised of her security deposit and pet damage deposit, doubled. The monetary order granted to the tenant was in the amount of \$1900, comprised of her security deposit of \$475 and pet damage deposit of \$475, doubled.

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*

Issue

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

Facts and Analysis

Evidence that the applicant has new and relevant evidence that was not available at the time of the original hearing-

In her application for review consideration, the landlord provided a written version of her recollection of the events surrounding the final days of the tenancy, specifically the timeline surrounding arrangements for a final inspection of the rental unit. Following this lengthy recollection, the landlord submitted that the new and relevant evidence was an email exchange between the landlord and tenant, dated June 29, 2013, which was attached to her application.

In explanation as to why the evidence was not submitted in advance of the hearing, the landlord contended that her internet service provider changed the way it stored emails.

The landlord also submitted a statement from a colleague, with an explanation that that the colleague came to the hearing as a witness and was not heard as the Arbitrator closed the hearing due to the tenant's disrespect.

Pursuant to Residential Tenancy Branch Policy Guideline 24, new evidence includes evidence that has come into existence since the dispute resolution hearing or evidence which the applicant could not have discovered with due diligence before the hearing.

In the case before me, I find the landlord's evidence, dated June 29, 2013, was available in advance of the hearing on November 5, 2013, and that she failed to prove that this evidence could not have been discovered with due diligence.

Additionally, the landlord contended that her witness was not allowed to be heard due to the tenant's disrespect. The decision of November 6, 2013, does not mention that the landlord identified a witness in attendance at the hearing and also specifically does not mention that the hearing was concluded prematurely. The decision, however, does specifically mention in preliminary matters that both participants, tenant and landlord, had to be reminded during the hearing that they should address the facts in issue, not becoming entrenched in personal animosity.

I therefore find the applicant/landlord has submitted insufficient evidence to support this ground in her application for review consideration.

Evidence the Decision was obtained by fraud

In support of this ground, the landlord recited that the tenant made a false statement when testifying that she was at the rental unit all day on June 30, 2013. In support of this contention, the landlord submitted that the locks were changed on June 17, 2013, and the tenant was not given a new key. The landlord said that this proved the tenant could not enter the rental unit after noon on June 30th as she herself locked the door at noon on June 30th.

What the landlord failed to explain is why the lock change on June 17th was significant in that the documentary evidence in the shows the tenant remained in the rental unit through at least June 29th.

The landlord argued that she believed this false statement put the thought in the Arbitrator's mind that the landlord did not attend the rental unit on Sunday, June 30.

In the case before, under the Policy Guideline, fraud may arise where a witness has deliberately misled the proceeding by the concealment of a material matter that is not known by the other party beforehand and is only discovered afterwards.

I do not find that to be the case here. The Arbitrator, in his decision, specifically recorded the landlord's testimony that she attended the rental unit on June 30, and that the tenant had vacated the rental unit.

Therefore this information was before the Arbitrator at the hearing.

I therefore find the arguments of the landlord in her application for review consideration consisted of re-arguments that the landlord presented during the hearing. It is evident that the landlord has taken issue with the outcome of the hearing; however the fact that the applicant/landlord disagrees with the conclusion reached by the Arbitrator does not amount to fraud.

Therefore I find that the landlord has not presented evidence to support her application for review consideration on this ground.

I further find, pursuant to Section 81(1)(b)(iii) of the Act, the landlord's application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied.

I must note that the Arbitrator based his decision not on the allegations contained in the landlord's evidence on her application for review consideration; rather he determined that the landlord issued only one bona fide Notice of a Final Opportunity to Inspect, on the proper form, for the exact date and time as had earlier been rejected by the tenant.

I must further note that the landlord also submitted additional issues she had with the hearing, such as the conduct of the hearing. The landlord also took exception to the wording on a Residential Tenancy Branch ("RTB") form and submitted that she was non-compliant with the Act due to misunderstanding of her requirements of the law. The landlord further submitted an offer of settlement of the monetary issues.

I have rejected these submissions as they are unrelated to her requirement to submit evidence in support of her alleged causes, but rather I find these submissions a further re-argument of her dispute of the tenant's application for dispute resolution.

Decision

Due to the above, I dismiss the landlord's application for review consideration and confirm the original decision of November 6, 2013, granting the tenant a monetary order of \$1900.

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 27, 2013

Residential Tenancy Branch