



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF OPR

### **Introduction**

On November 13, 2013, a hearing was conducted to resolve a dispute between these two parties. The landlord had applied for an order of possession pursuant to a notice to end tenancy for nonpayment of rent. Both parties attended the hearing. The Arbitrator granted the landlord's application. The tenant 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*, 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.

### **Issues**

Does the tenant have evidence that the arbitrator's decision and order were obtained by fraud?

### **Facts and Analysis**

#### **Decision Obtained by Fraud**

This ground applies where a party has evidence that the Arbitrator's 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".

Intentionally false testimony would constitute fraud, as would making changes to a document either to add false information or to remove information that would tend to

disprove one's case. 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.

The burden of proving this issue is on the person applying for the review. If the Arbitrator finds that the applicant has met this burden, then the review will be granted.

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.

On this ground for review, that the Arbitrator's decision was obtained by fraud, the applicant alleged that the landlord committed fraud by providing false testimony. The tenant states that the landlord falsely testified that the tenant did not make an attempt to pay rent. The tenant also stated that the eviction notice filed into evidence was not a true copy of the original.

With respect to the matter the tenant asserts is fraudulent, it was not a matter unknown to the tenant at the time of the original hearing. It was in existence and could have been submitted at the original hearing.

The Arbitrator made a decision based on Section 46 of the Act which stipulates that a tenant has five days from the date of receiving the notice to end tenancy to either pay the outstanding rent or to file an application for dispute resolution. The tenant was served a notice to end tenancy on September 11, 2013. The Arbitrator found that the tenant failed to pay outstanding rent and also did not make application to dispute the notice within five days of receiving the notice to end tenancy.

The tenant may disagree with the Arbitrator's findings of fact, but the tenant had an opportunity to respond to the landlord's evidence at the hearing. Therefore based on the above findings and section 46 of the *Residential Tenancy Act*, the Arbitrator granted an order of possession to the landlord.

The tenant has not provided me with new evidence to support the allegation that the decision under review was obtained by fraud. The application discloses insufficient evidence that the decision under review was obtained by fraud; and therefore, fails to satisfy the inherent burden of proof.

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 applicant has failed to prove that the arbitrator's decision was obtained by fraud. Therefore, I find that the application for review must fail.

Therefore, **I dismiss the application for Review and confirm the original decision dated November 13, 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: December 03, 2013

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Residential Tenancy Branch