



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Spectacle Lake Home Park (1989) Ltd.
and [tenant name suppressed to protect privacy]

REVIEW CONSIDERATION DECISION

Dispute Codes: FF O OLC PSF RP RR

Applicant's Submission

One tenant of 7 separate joined applications has applied for review consideration on behalf of all but 1 of the 8 parties. The 7 files were joined to be heard on November 27, 2013. On November 27, 2013 a decision was issued in relation to the joined applications, which had requested various Orders of compliance and rent reduction.

The November 27, 2013 decision concluded that, as a result of issues related to administrative fairness the applications were dismissed with leave to reapply. No findings were issued in relation to any of the matters contained in the applications.

The tenants have applied requesting review consideration based on 2 grounds for review.

- 1. A party has new and relevant evidence that was not available at the time of the original hearing.*

The tenants submit that the decision issued on November 27, 2013 included errors and the claims were denied, with leave to reapply. The tenants' state that there were procedural issues, that evidence submissions included privacy transgressions that should nullify that evidence and that the landlord's submissions included factual errors and omissions.

The tenants submit that statements provided as part of the application for review consideration should be considered as new and relevant evidence. The tenant's state they were not allowed to proceed with their applications, to present evidence and that a lack of order during the hearing prevented the applications from being heard. The tenants provided a written summary of what they believe occurred during the November 27, 2013 hearing; an outline of perceived short-comings of the conduct of the hearing. The tenants indicate that they requested review consideration as their written submission should be considered as new and relevant.

The tenants supplied copies of typed statements related to tenancy concerns; 5 of the applicants made submissions covering a variety of concerns in relation to the conduct of the hearing and privacy concerns.

2. A party has evidence that the director's decision or order was obtained by fraud.

The tenants submit that the landlord's photographic evidence is fraudulent, taken without tenant's permission and are meant to mislead. The tenants submitted a November 18, 2013 typed document referencing the landlord's evidence list; undated septic documents, a newsletter dated May 2013; photographs, weather reports and emails.

The tenants submit they were denied the right to present their case and that the respondent's fraudulent evidence was allowed "without consent ...ensured a "fraud" was perpetrated by the landlord/respondent on the Director and 7 applicants."

Analysis

1. A party has new and relevant evidence that was not available at the time of the original hearing.

New and Relevant Evidence

Leave may be granted on this basis if the applicant can prove that:

- he or she has evidence that was not available at the time of the hearing;
- the evidence is new,
- the evidence is relevant to the matter before the arbitrator,
- the evidence is credible, and
- the evidence would have had a material effect on the decision.

Only when the applicant has evidence which meets all five criteria will a review be granted on this ground.

The tenants submit that the claims were denied; this is incorrect. No finding has been made in relation to any aspect of the claims made. The decision issued on November 27, 2013 indicates that, in consideration of administrative fairness, after a 90 minute hearing, the matters should be dismissed with leave to reapply. The parties each have the right to re-submit an application, in accordance with the legislation.

Any omissions, breach of privacy or other concerns that the tenants believe affected the outcome of the November 27, 2013 hearing fail to support a request for review hearing based on new and relevant evidence. The tenants have made a submission that provides an argument against the decision issued, but do not provide any new and relevant evidence that could not have been made available at the time of the hearing. As

the November 27, 2013 decision resulted in dismissal with leave to reapply; the tenants will have a full opportunity to reapply at which time they may make any evidence submissions they believe are relevant.

Therefore, I find that the request for review consideration on the ground of new and relevant evidence is dismissed.

1. A party has evidence that the director's decision or order was 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".

The burden of proving fraud 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. The applicant must show that false information was submitted, that the person submitting the evidence knew it was false and that the false information was used to obtain the desired outcome.

There was no decision made in relation to the matters included on the applications, outside of the tenant's right to reapply. As the decision did not consider the facts of the claim and the decision did not make any findings in relation to the evidence, there is no basis upon which an allegation of fraud can be made. The decision indicated that, as a result of the tenant's agent raising a matter of natural justice, all applications should be dismissed with leave to reapply.

Therefore in the absence of evidence that the decision was obtained by fraud, I find that the request for review consideration on this ground is dismissed.

Therefore, I find that the decision issued on November 27, 2013 is confirmed.

Conclusion

The application for review consideration is dismissed.

The decision issued on November 27, 2013 is confirmed.

Dated: December 23, 2013