



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property Management Services Ltd.
and [tenant name suppressed to protect privacy]

REVIEW CONSIDERATION DECISION

Dispute codes: FF MNDC MNR MNSD OPR

This is an application filed by the tenant for review of the December 5, 2013 decision decision and orders of an Arbitrator. The applicant applied for review on the grounds that she had new and relevant evidence, not available at the time of the original hearing and on the ground that the decision or order was obtained by fraud. She said in her application: "See attached paper heading Exhibit C2" (reproduced as written).

The tenant attached four pages to her application for review. The first page was a photocopy of a September 13, 2013 letter from the landlord to the tenant, a copy of which had been submitted as evidence by the landlord before the original hearing. The second page was a handwritten document from the tenant in which she said in part:

I was unable to properly state my case due to the fact that the landlord failed to disclose the dates of several payments he received and according to the landlords own testimony at the top of page 2 of RTB final analysis (which you have a copy of in your files) admits three payments of \$375. were made. Because the tribunal based its decision on the amount owing and disregarded a receipt from the tenant, the tribunal made a substantial error in their calculations of money owing and their decision based on that fact. (reproduced as written)

The following two pages submitted by the tenant consisted of photocopies of rent receipts and several notes concerning rent payments. None of the documents submitted constituted new and relevant evidence that was not available at the time of the original hearing. As noted in the decision under review, the receipts were the subject of oral testimony at the hearing and were considered by the arbitrator in making her decision. She determined that the landlord issued two receipts with respect to one payment that had been received for November.

In her Review Application the tenant asserted that the landlord falsely stated that the tenant had only lived at the rental unit for three years and said that the landlord: "lied about how much & when rent was paid."

The Residential Tenancy Policy Guideline #24 concerning Review applications contains the following passage:

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.

The tenant has not alleged any new and material facts. The facts she related in the documents submitted on the review were known to her at the time of the original hearing. The tenant's review application is an attempt to reargue matters that were before the Arbitrator at the original hearing. On the information provided by the tenant I am unable to conclude that the decision was obtained by fraud. The tenant has not provided any new and relevant evidence that was not available at the time of the original hearing. The tenant's application for review on the grounds that She has new and relevant evidence and on the ground that the decision was obtained by fraud is denied.

For the above reasons I dismiss the application for review. The original decision and orders dated December 5, 2013 are confirmed.

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 16, 2013

Residential Tenancy Branch