



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Review Consideration Decision

Dispute Codes: FF MNDC MNR OPC OPR

Introduction

This is an application filed by the tenant for review of a decision dated January 07, 2014 (amended January 09, 2014). Pursuant to the decision, an order of possession and a monetary order were issued in favour of the landlord.

Division 2, Section 79(2) of the *Residential Tenancy Act* provides that 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 application for review is filed on the basis of grounds # 2 and # 3.

Facts and Analysis

Does the tenant have new and relevant evidence that was not available at the time of the original hearing?

Leave may be granted on this ground only if an applicant can prove as follows:

- the evidence submitted was not available at the time of the original hearing;
- the evidence is new;
- the evidence is relevant to the matter which is before the Arbitrator;
- the evidence is credible;

- the evidence would have had a material effect on the decision of the Arbitrator.

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

In this aspect of the application the tenant claims that he received the notice of hearing on January 04, 2014, and that this did not provide him with sufficient time to submit evidence for the hearing which was scheduled for January 07, 2014, as follows:

1. Letter from my lawyer to [the landlord] dated November 7, 2013 asking for payment for work done on his property, and
2. Pictures of me working on the house; before and after pictures completed on work on the outside of the house.

I find that none of this evidence would have had a material effect on the decision of the Arbitrator. Specifically, the tenant does not deny that he did not file an application to dispute the landlord's 10 day notice to end tenancy for unpaid rent dated and served November 16, 2013. Additionally, further to the written tenancy agreement itself, there is no documentary evidence to support the claim that there was an agreement between the parties in regard to rent being paid by way of the tenant's labour for a particular period of time. Accordingly, the application for review on this ground must be dismissed.

Does the tenant have evidence that the decision and orders were obtained by fraud?

A party applying for review on grounds that the 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 the 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 was obtained by fraud. Fraud must be intended. A negligent act or omission does not constitute fraud. The burden of proving fraud is on the party applying for review.

In this aspect of the application the tenant claims, in part, as follows:

[The landlord] stated that I did not pay rent. This is false. We had an agreement that I would repair the exterior of his house with new siding in exchange for 1 year's rent. After the work was completed, the Landlord changed his mind and offered only 6 months free rent (that ends Dec/31/2013).

I refer to the reasons set out immediately above in finding that the application for review on this ground must also be dismissed. In summary, I find that the tenant has failed to meet the burden of proving that the decision was obtained by fraud.

Finally, section 81 of the Act speaks to **Decision on application for review**, in part:

81(1) At any time after an application for review of a decision or order of the director is made, the director may dismiss or refuse to consider the application for one or more of the following reasons:

(b) the application

- (i) does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely,
- (ii) does not disclose sufficient evidence of a ground for the review,
- (iii) 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, or...

Decision

For the reasons set out above, the application for review is hereby dismissed. The decision dated January 07, 2014 (amended January 09, 2014) is hereby 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: January 16, 2014