



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Review Consideration Decision

Dispute Codes: ERP MNDC OLC O RR

Introduction

The tenant has applied for a review of the decision of Arbitrator dated November 18, 2013.

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 tenant has applied for review on the second and third grounds.

Issues

Is the tenant entitled to a review on either the second or third grounds?

Facts and Analysis

The original application in this matter dealt with a monetary claim by the tenant. The claim for monetary compensation revolved around what the tenant claimed was an elevated moisture level in the rental unit. The tenant's application was dismissed in its entirety.

The tenant has requested a review hearing on the basis of new and relevant evidence and fraud. I shall deal with each of these in turn.

New and Relevant Evidence – In support of this ground the tenant states in her Application for Review that the new and relevant evidence is as follows:

*“Response from Landlord.
Copy of the occupancy permit”*

The tenant did not explain why this evidence was not available at the time of the hearing or how it is relevant. The Review application form requires that the applicant ***“list EACH item of new and relevant evidence and state WHY it was not available at the time of the hearing and HOW it is relevant.”*** The tenant has not provided the information required and as a result, I find that the applicant has not established this ground of review.

Fraud - The applicant claims that the landlord committed fraud at the hearing when he *“tried to say that he didn’t understand English”* and when his wife *“didn’t acknowledge her presence [at the hearing] until she started giving evidence.”* The applicant then goes on to provide written contradictions to a table-formatted written response the landlord had submitted into evidence in response to the written statement the tenant had originally submitted into evidence. In other words, the applicant has submitted a set of objections she has to the version of events advanced by the landlord at the hearing.

In considering this ground of review, I refer to Residential Tenancy Policy Guideline No. 24 which provides guidance on the question as to what constitutes fraud. This guideline states, in part, as follows:

Fraud is the intentional use of false information to obtain a desired outcome.

Fraud must be intended. An unintended negligent act or omission is not fraudulent. Intentionally providing false testimony would constitute fraud, as would making changes to a document either to add false information, or to remove information rendering the document false. 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.

The application for the review consideration must be accompanied by sufficient evidence to show that false evidence on a material matter was provided to the RTB, and that this evidence was a significant factor in the making of the decision. **The application package must show the newly discovered and material facts were not known to the applicant at the time of the hearing, and were not before the RTB.** The application package must contain sufficient information for the person conducting the review to reasonably conclude that the new evidence, standing alone and unexplained, supports the allegation that the decision or order was obtained by fraud.

Taking this guideline into consideration, in particular the portion highlighted above, I am not satisfied that the application discloses sufficient evidence of this ground for review. What the applicant has submitted is really just her counter-statement to the counter-statements made by the landlord at the hearing. Further, the tenant's assertion that the landlord tried to say that "*he didn't understand English*" or that the landlord's wife "*didn't acknowledge her presence [at the hearing] until she started giving evidence*" were both issues that the original arbitrator would have taken into account in the rendering of his decision. There is a big difference between fraud and the proof thereof and a party's view that the other party made false statements at the hearing which would have been met by a counter-statement by the party applying and the whole evidence adjudicated upon by the arbitrator.

Decision

The application for review is dismissed.

The decision made on November 18, 2013 stands.

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 20, 2014

Residential Tenancy Branch