



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Review Consideration Decision

Dispute Codes: FF MND MNDC MNR MNSD

Introduction

This is an application by the tenant for a review of the decision of the Dispute Resolution Officer dated December 23, 2013 with respect to the outcome of the landlord's application. The outcome of that hearing was landlord was awarded monetary compensation for cleaning costs and was ordered to retain a portion of the tenant's security deposit. The tenant's application is alleging that the decision was reached by fraud on the part of the landlord.

Section 79(2) of the *Residential Tenancy Act* states that a party to a dispute may apply for a review of the decision. The application for review must contain reasons to support one or more of the following grounds for review:

- a. a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
- b. a party has new and relevant evidence that was not available at the time of the original hearing.
- c. a party has evidence that the director's decision or order was obtained by fraud. (My emphasis).

In this application, the tenant has applied for review under the ground of fraud (c).

Issues

Has the applicant for review provided sufficient evidence to support the ground for a review?

Facts and Analysis

Evidence

In the application for review consideration in the box marked, "Which information submitted for the initial hearing was false and what information would have been true?" the tenant stated that :

“1. She claimed that she never signed /initialed the damage report made on Dec 1 2011 – we have proof.” (reproduced as written).

“2. She claims we did not give her our new address before Sep 3, 2013 and we have proof that we gave it to her on our notice July 30 2013.” ..” (reproduced as written).

“3. She also never provided us with pictures of the carpets that she claimed were dirty and no receipt for professional cleaning or any cleaning.” (reproduced as written).

With respect to the ground put forward by the tenant that the decision was obtained by fraud, I find that the tenant apparently had concerns about the fact that, after hearing the tenant's evidence on the above points, the arbitrator found in favour of the landlord based on finding made, with which the tenant disagreed. The tenant provided written testimony with detailed information correcting information provided by the landlord that was accepted by the arbitrator during the original hearing.

I find that, before the hearing was convened, the tenant was able to submit supportive evidence. I find that, during the hearing, the tenant was also provided with the opportunity to give testimony, present the evidence and verbally refute any or all of the landlord's submissions pertaining to the issues under dispute. I find that the decision documents the tenant's stated position. I find that it is evident that all of the tenant's arguments were then weighed and duly considered by the arbitrator, as clearly indicated within the December 23, 2013 decision.

I find that the tenant's allegation of fraud in this Application for Review Consideration merely consists of arguments on points that had already been put forth by the tenant during the original hearing. These were matters that were before the arbitrator and were thus already duly considered. An Application for Review Consideration does not function to give one party a second opportunity to reargue their case.

I find that it is a principle of natural justice that each party to a dispute is always at liberty to candidly give his or her testimony as they choose to do. At the hearing, each person is expected to advocate and present their most compelling arguments to support their position as they see it.

While it is clear that the tenant has taken serious issue with the outcome of the hearing, the fact that an opposing party does not believe, nor agree with, the other party's version of the “facts”, and objects to the conclusion reached by the hearings officer, does not make this a case of fraud under the Act.

I find that, the tenant has not provided sufficient evidence in the application to establish that fraudulent actions had been perpetrated by the landlord that unfairly affected the decision and results of the hearing. For this reason, I reject the ground of fraud put forth by the tenant to justify a review of the decision.

Decision

I dismiss the tenant's application for review consideration and confirm the original decision and order of December 23, 2013 still stand.

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 13, 2014

Residential Tenancy Branch