



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: O

Introduction

The original dispute resolution hearing on the application of the tenant was held on December 4, 2013, and a Decision was issued by another Arbitrator on December 4, 2013. In that Decision, the other Arbitrator made a finding that the tenant was entitled to a monetary award of \$1200 and granted the tenant a monetary order in that amount.

The tenant's monetary award was for a return of her security deposit of \$600, doubled.

This is a request by the landlord for a review of that original Decision.

The landlord applied for a review on the ground that she has evidence that the Decision of July 10, 2013, was obtained by fraud, pursuant to Section 79(2) under the *Residential Tenancy Act*

Issues

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

Facts and Background

In the Decision of December 4, 2013, the original Arbitrator found that the tenant provided the landlord her written forwarding address on June 22, 2013, in a letter, that the landlord did not repay the tenant's security deposit, and did not file for dispute resolution within 15 days of receipt of the written forwarding address.

Based upon s. 38 of the Act, the original Arbitrator doubled the tenant's security deposit and granted the monetary order in that amount.

The documentary evidence submitted by the tenant for her original application for dispute resolution was a copy of a letter dated June 10, 2013, and a letter from the

tenant's witness, dated August 22, 2013, verifying that the tenant delivered a copy of the June 10, 2013, letter personally to the landlord.

In her application for review consideration to support her allegation that the Decision of the Director was obtained by fraud, the landlord submitted a copy of the June 10, 2013, letter from the tenant, which was the same copy submitted by the tenant in support of her original application for dispute resolution. The landlord contended that this letter shows that the tenant's forwarding address was not provided; rather only a telephone number was provided in that letter.

Analysis on Review

Residential Tenancy Policy Guideline #24 provides, among other things, that 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.

When claiming fraud, it is not enough to allege that the opposing party made false statements at the hearing, when the evidence as a whole was adjudicated upon by the Arbitrator.

In this case, I find the applicant/landlord provided documentary evidence which was clearly before the original Arbitrator for the dispute resolution hearing. In reviewing this letter of June 10, 2013, while I do not find a forwarding address was contained within that letter, it may very well be that the original Arbitrator considered other evidence, such as oral evidence taken at the hearing or the fact that the landlord received the tenant's address when receiving her application for dispute resolution.

The argument of the landlord in her application for review was the argument the landlord's agents should have made at the hearing which the agent attended. I also concluded that the landlord's submissions were before the Arbitrator at the hearing.

It is evident that the tenant has taken issue with the outcome of the hearing; however the fact that the applicant/tenant disagrees with the conclusion reached by the Arbitrator does not amount to fraud.

I therefore do not accept the applicant/landlord's claim that the Decision was obtained by fraud and I find that the landlord has not presented evidence to support her application for review consideration.

I note that while an alleged error in law is not a ground for review under the *Residential Tenancy Act*, it may be a ground for judicial review in the Supreme Court.

Decision

Due to the above, I dismiss the landlord's application for review consideration and confirm the original Decision and monetary order of December 4, 2013.

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 08, 2014

Residential Tenancy Branch