



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd.
and [tenant name suppressed to protect privacy]

REVIEW CONSIDERATION DECISION

Dispute codes: MNR OPR

This is an application filed by the tenant for review of the January 27, 2014 decision and orders of an arbitrator. The applicant applied for review on the ground the decision or order was obtained by fraud. He said in his application that:

No notice was served, usually a 10-day eviction is given but no warning from it. Its impossible to move in 2 days. Had they given us a 10 day, we could have moved out. I live on income assistance and my girlfriend's job hours have been cut, so finding a place and rent is hard.

In the decision under review the arbitrator stated as follows:

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the months of December and January and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on January 3, 2014 at 10:50 a.m. and that this service was witnessed by a third party.

Documents submitted by the landlord in support of the application included a form of proof of service of the 10 day Notice to End Tenancy that declared that the Notice to End Tenancy was posted to the door of the rental unit on January 3, 2014 by the landlord's agent in the presence of a witness. The landlord submitted proof that the tenant was served with the Notice of Direct Request Proceeding by registered mail sent on January 23, 201. The tenant did not dispute that he was served with notice of the application.

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 merely alleged that he did not receive the Notice to End Tenancy, but he has not provided evidence of fraud by the landlord.

On the information provided by the tenant I am unable to conclude that the decision was obtained by fraud. The tenant did not dispute that the rent is unpaid and did not provide any evidence apart from the statement quoted above. The tenant's application for review on the ground that the arbitrator's decision was obtained by fraud is denied.

For the above reasons I dismiss the application for review. The original decision and orders dated January 27, 2014 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: January 31, 2014

Residential Tenancy Branch