



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

Introduction

This is an application by the tenant for a review of an ex-parte Decision dated December 16, 2013, pursuant to an application under Sections 55(4) and 55(2(b) of the Act.

Division 2, Section 79 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 applies for review on the ground permitted under Section 79(2)(c) of the *Residential Tenancy Act* (the Act), purporting the Decision was obtained by Fraud:

Issues

Does the applicant provide sufficient evidence supporting a ground for Review?

Facts and Analysis

In their Application for Review, the tenant provides a copy of the tenancy agreement, a quantum of text messages between the parties in respect to disagreement over the payable rent purporting to be evidence of fraud, and a receipt for a portion of the rent stated as having been produced by the tenant.

In respect to a claim of Fraud, a review may be granted if the person applying for the review provides newly discovered and material facts proving false information was submitted knowing to be false and that it was intentionally used to obtain the desired results.

It must be noted that it was available to the tenant to file for dispute resolution within 5 days of having received the 10 Day Notice to End tenancy, but did not do so, and therefore as per Section 46(5) was conclusively presumed to have accepted the tenancy was ending and was compelled to vacate by the effective date of the Notice.

As a result, It must further be noted that in this matter, the landlord obtained an Order for Possession and a Monetary Order based on evidence the tenant did not dispute the 10 Day Notice to End within the legislated prescribed time to do so, therefore entitling the landlord to an Order of Possession.

The tenant's evidence for this Review consideration does not provide proof all rent was paid in satisfaction of the contractual tenancy agreement.

The Residential Tenancy Policy Guideline #24 concerning Review applications contains, in part, the following passages:

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 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 tenants have not alleged any new and material facts and on reflection of all the information provided I am unable to conclude the Decision was obtained by fraud. The tenants' application for review on the ground that the Arbitrator's Decision was obtained by fraud is denied. As a result of all the above, **I dismiss** the Application for Review on the basis that the application discloses insufficient evidence of a ground for Review and discloses no basis upon which the Decision or Order of the Director should be set reviewed. Section 81 of the Act, in part states as follows:

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
 - (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

Decision

The tenant's application to Review **is dismissed** and I confirm the original Decision and Order. The Decision made on December 16, 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 14, 2014

Residential Tenancy Branch