



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR MNSD

Introduction

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 applicant was alleging that a Review was warranted based on the ground that new and relevant evidence has come to light that was not available at the time of the original hearing and could not be obtained through due diligence. The applicant was also alleging that a Review was warranted based on the ground that the dispute resolution officer's decision was obtained by fraud.

Issues

The issues to be decided are as follows:

- Is there new relevant evidence that did not exist, or could not be obtained through due diligence, prior to the hearing that would have changed the decision?
- Was the decision was obtained by fraud committed by the tenant that impacted the decision?

Facts and Analysis

In support of the application, the landlord submitted into evidence the following:

- A copy of the Application for Review Consideration,
- A copy of the dispute resolution decision dated January 20, 2014 for the hearing held on January 8, 2014,

- Written testimony from the landlord and some witnesses
- A Copy of a receipt dated September 17, 2013
- Copies of email communications and text messages
- A copy of a plumber's Certificate of Qualification
- An email memo from the plumber dated February 4, 2014 relating to a report made by the plumber to the landlord on September 17, 2013,
- A copy of the tenancy agreement
- Copies of the move-in and move-out condition inspection reports.
- Photographs

In the Application for Review Consideration, the landlord indicated that the above submissions constitute new and relevant evidence that qualifies as one of the grounds for Review consideration.

Under the heading,

“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 landlord stated,

“Item #1 Photos showing no mold to the interior drywall, shows the property has been maintained and repaired, that it complies with Section 32.1.....No information was not submitted as mentioned in the letter by, (Property Manager) (attachment #1) because landlord understood the Property Manager was going to submit the evidence, and join in the dispute resolution conference call. However, two days before the hearing she told the landlord she would have to do it by herself. Property Manager did not file evidence that's valuable to this situation. These pictures show that moisture from the suite that caused mold on the tenants belongings, did not come from the building itself or lack of maintenance & repair of the building”

(Reproduced as written)

With respect to the landlord's allegation that the decision was obtained by fraud, the landlord stated,

“During the Dispute Resolution hearing via teleconference; the Tenant, (BT), said that he had to call (the Plumber) and asked him if he was a real plumber? Tenant said that the plumber told him that he in fact was not a certified Plumber! When Landlord confronted (the Plumber), about the call and what the tenant had said, (the Plumber) advised the landlord that the tenant had not called him at all.”

The landlord states that the false information was used to get the desired outcome in the following way,

“When BT, (tenant) stated tha the landlord had hired just a regular Joe with no credentials, it looks as if the landlord wants to take the easy way out and not put the big bucks into her rentals. In addition, it makes the plumbers word to be with out value. Making the text message(the Plumber) text to me and then I forwarded it to (BT), to be unsubstantial and without expertise.” (Reproduced as written)

The landlord’s attached written testimony discussed each item of the alleged new evidence in further detail.

Analysis

The burden of proof is on the Applicant to prove that the criteria for a review hearing has been met under the Act.

I refer to Section 79(2) of the Act which provides that a decision or order of the director may be reviewed only on one or more of the grounds listed above:

New Evidence

In regard to new and relevant evidence, *Residential Tenancy Policy* 24 states, in part, that leave may be granted on this basis if the applicant can prove that he or she now has evidence that was not available at the time of the original arbitration hearing, that is both new and relevant to the matter which is before the arbitrator.

Only when the applicant has evidence which meets the above criteria, will a review be granted on this ground.

However, I find that the attached evidence from the landlord could have, and should have, been obtained, submitted and served on the other party, prior to the hearing held on January 8, 2014. I find that the landlord was expected to adequately prepare their case and submit all of the relevant evidence to support their own claim and defend against the tenant’s cross application that was filed in December 2013.

I find that the additional information provided by the landlord with this application for Review Consideration is not new.

I note that the landlord explained that the reason why this evidence was not available for the landlord to present at the hearing, was due to the fact that the landlord’s property manager failed to submit the necessary evidence. In addition,

the landlord did not find out that the property manager would not be attending until 2 days prior to the hearing.

I find that it is the responsibility of each participant to prepare for an arbitration hearing as fully as possible. Parties should collect and supply all relevant evidence to the arbitration hearing and ensure the attendance of their agents or witnesses if they plan on having them participate.

Evidence which was in existence at the time of the original hearing, and which was not presented by the party, will not be accepted on this ground. I find that because the evidence now submitted by the landlord was in existence at the time of the hearing, it follows that it should have been obtained, served on the other party and Residential Tenancy Branch prior to the hearing date and should have been presented by the landlord during the proceedings.

I find that there was a window of time spanning from October 11, 2013, when the landlord initially filed their application, until the hearing date that occurred on January 8, 2014, during which the landlord could have obtained the relevant reports, photos and witness statements and submitted them to support their case.

Given the above, I find that the landlord has not provided new and relevant evidence that could not have been obtained through due diligence prior to the original hearing. I find that the portion of the landlord's Application put forth on the ground of new evidence must therefore be dismissed.

Fraud

With respect to the ground alleged by the landlord that the decision was obtained by fraud, I find that the landlord is challenging portions of the tenant's testimony that had evidently been made during the proceedings about the credentials of the landlord's plumber. The landlord's position is that evidence presented by the tenant during the hearing was false.

I find that the landlord's allegation of fraud in this application for review consideration merely consisted of arguments that the landlord already had an opportunity to express during the hearing. I also find that the arbitrator made no mention of the landlord's plumber's credentials as a basis for any portion of the decision dated January 20, 2014. I find that the arbitrator focused mainly on the fact that the landlord was aware that a problem with humidity pre-existed in the unit in the past, but failed to notify the tenants and neglected to provide them with a dehumidifier, as she had apparently done with previous renters.

I find it likely that the landlord presented verbal feedback on the tenant's testimony and that the landlord's rebuttal testimony was heard and duly taken into consideration by the dispute resolution officer in rendering the decision.

I find that it is a principle of natural justice that each participant in a dispute is always at liberty to freely give his or her testimony and provide their version of the relevant data as they see fit to do. In a hearing, each person is entitled to advocate and provide the most compelling arguments in favour of their position.

It is evident that the landlord disagreed with the tenant's testimony and has taken issue with the outcome of the hearing. However, the fact that one party disputes the other party's version of the "facts", and disagrees with the conclusion reached by the arbitrator does not serve to make this a case of fraud.

I find that prior to the hearing date, each party had ample opportunity to provide the relevant evidence to support their case and were also given time to state their own case and refute the other party's testimony and evidence. I find that, in this instance, the landlord has not produced sufficient evidence in the application to establish that fraudulent actions had been perpetrated by the tenant affecting the outcome of the hearing.

For the reasons stated above, I reject the ground of fraud put forth by the landlord to justify a review of the decision.

Decision

Section 81(1) of the Act states that the director may dismiss or refuse to consider the application for one or more of reasons including that the application fails to give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely, the application does not disclose sufficient evidence of a ground for the review, the application 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, or that the application is frivolous or an abuse of process.

Pursuant to *Section 81(b) (ii)* of the *Residential Tenancy Act*, I must dismiss this application for review on the basis that it does not disclose sufficient evidence to support any grounds for a review. I find that the Applicant has not succeeded in demonstrating that the evidence contained in this Application would meet the criteria for granting a review under either ground cited.

Therefore the landlord's application for review consideration is hereby dismissed without leave and the final decision and order rendered on January 20, 2014 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: February 13, 2014

Residential Tenancy Branch