



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

This Application was filed by landlord, “TM”, on April 30, 2014, seeking a Review Consideration of the decision dated April 4, 2014 and having received that decision by mail on April 23, 2014. The decision was favourable for the tenant and granted the tenant a monetary order in the amount of \$600.00.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of a 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 landlord has applied on the third ground.

Issue

- Has the landlord provided sufficient evidence that the director’s decision was obtained by fraud?

Facts and Analysis

The Application contains information under section C3, from the landlord alleging that the director’s decision was obtained by fraud. The landlord writes in her Application:

“Person rented a room in a house temporarily, it was a shared accommodation – sharing of kitchen and laundry. Not a tenant, no tenancy agreement, he was a boarder/lodger.”

[Reproduced as written]

The landlord also writes in her Application under “How did the person who submitted the information know it was false”:

“He knew it was a room for rent not a suite or housing rental unit.”

[Reproduced as written]

The landlord also writes in her Application under “How do you think the false information was used to get the desired outcome?”:

“He attached a copy of property assessment form to show it was a rental unit in which he was renting; deliberately to show he was renting a suite. He was removed by police for drunk and violence behaviour.”

[Reproduced as written]

The landlord submitted 23 pages in evidence, which included a one-page 2013 Property Assessment Notice for the rental unit address, which supports that the owner of the property is not the named landlord.

Decision

Based on the above, the documentary evidence and Application submitted, and on a balance of probabilities, I find the following.

In order to be successful on the third ground for Review, the landlord must provide sufficient evidence to support, on the balance of probabilities, that the director’s decision was obtained by fraud.

On page one of the original decision dated April 4, 2014, the Arbitrator consideration jurisdiction as a preliminary issue. The Arbitrator writes in part;

“...The Act applies to landlords and tenants who enter into a tenancy agreement, including oral tenancy agreements, with respect to a rental unit and residential property. Section 4 of the Act specifically exempts certain living accommodations from the Act, including: living accommodation where a tenant and owner share a kitchen or bathroom. In this case, based upon the evidence presented to me, I was satisfied the tenant was not sharing the kitchen or bathroom with the owner of the property. Given the security deposit and rent receipts presented to me as

evidence, I am also satisfied the landlord was acting as a landlord with respect to a rental unit or residential property. Therefore, I found that the Act applies and I accepted jurisdiction to resolve this dispute...”

[reproduced as written]

Based on the above, which is supported by the landlord’s evidence submitted for this Application for Review Consideration, the landlord is not the **owner** of the residential property. Furthermore, a room can be considered a rental unit under the *Act*, and when a room is rented and a kitchen or bathroom is shared with a landlord who is not the owner of the property, a tenancy can be created and the Act does apply, which is the case in this matter. The fact that the landlord disagrees with the conclusion reached by the Arbitrator does not amount to fraud. I find the landlord has provided insufficient evidence to prove her claim that the director’s decision was obtained by fraud. Therefore, **I dismiss** the landlord’s Application due to insufficient evidence.

As the landlord’s Application has been dismissed on the third ground, the decision and order made on April 4, 2014, **stand and remain in full force and effect**.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 5, 2014

Residential Tenancy Branch