



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

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:

- a. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
- b. A party has new and relevant evidence that was not available at the time of the original hearing.
- c. A party has evidence that the director's decision or order was obtained by fraud.

The Tenants now apply for review consideration on the grounds that they have evidence that the director's decision or order was obtained by fraud.

Issues

Have the Tenants provided evidence that the director's decision or order was obtained by fraud?

Facts and Analysis

The Decision and Order under review is a decision issued by Arbitrator Nazareth on September 10, 2014, which awarded the Landlord a monetary order for damages of \$5,900.00 and awarded the Tenants the return of double their security deposit in the amount of \$1,800.00.

The Tenants submitted documentary evidence to support their request for review consideration which consisted of: the original decision; a copy of a tenancy agreement issued by a different landlord for a different rental property; two invoices that were in the Landlord's original evidence submission and were before the Arbitrator at the time of the hearing; a written description of six photographs, photographs; and the Tenants' application for review consideration.

The reasons the Tenants rely on for proving this Decision and Orders were obtained by fraud were: (1) that the Landlord provided false information of when the Landlord's photographs were taken because the Tenants moved out of the unit over a period of two days and have since moved their furniture which is displayed in photos of their new residence; (2) The Tenants had testified that the white marks on the carpet was a powder carpet freshener and not paint and provided new photos of the powder on their current carpet to support their previous arguments; (3) the Tenants now alleged that the two invoices provided in the Landlord's original evidence are fraudulent because of the dates and wording written on the invoices.

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.

It is not enough to allege that someone giving evidence for the other side made false statements at the hearing, which were met by a counter-statement by the party applying, and the whole evidence adjudicated upon by the Arbitrator. A review hearing will likely not be granted where an Arbitrator prefers the evidence of the other side over the evidence of the party applying.

After careful consideration of the foregoing I note that the original hearing was attended by both Landlords and both Tenants. Page 1 paragraph 2 of the September 10, 2014 Decision states:

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Upon review of the above, I find that all of the facts relied upon by the Tenants for support of their allegations of fraud, were known to the Tenants at the time of the hearing, and were before the Arbitrator at the time of the hearing. Attempting to submit newly staged photographs and creating new arguments about evidence that was

received prior to the hearing is simply conjecture and are the Tenants' attempt to reargue their case.

Based on the aforementioned, I find the Tenants have provided insufficient evidence to prove newly discovered and material facts, which were not before the Arbitrator, and from which the Arbitrator conducting the review can reasonably conclude that the decision or orders were obtained by fraud.

Decision

Overall I find that pursuant to Section 81(b) the application does not disclose sufficient evidence of a ground for the review and 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.

The Decision and Orders made on September 10, 2014, stand.

This decision is legally binding 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: November 05, 2014

Residential Tenancy Branch