



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

On September 26, 2014 a hearing was conducted to resolve a dispute between these parties. The Arbitrator dealt with the tenants claim for a retroactive rent reduction for the four months the tenants claimed it took the landlord to deal with asbestos in the unit. The Arbitrator dismissed the tenants' application. The tenants have applied for a review of this Decision.

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.

Issues

The applicants rely on sections 79(2)(b) and (c) of the *Residential Tenancy Act* (the "Act"); that the party has new and relevant evidence that was not available at the time of the original hearing. The party has evidence that the Arbitrator's decision or order was obtained by fraud.

Facts and Analysis

New and Relevant Evidence

Leave may be granted on this basis if the applicant can prove that:

- he has evidence that was not available at the time of the original hearing;
- the evidence is new,
- the evidence is relevant to the matter which is before the Arbitrator
- the evidence is credible, and
- the evidence would have had a material effect on the decision of the Arbitrator.

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

Prior to a hearing, parties must collect and supply all relevant evidence to the hearing. Evidence refers to any oral statement, document or thing that is introduced to prove or disprove a fact in a dispute resolution hearing. Letters, affidavits, receipts, records, audio, video, and photographs are examples of documents or things that can be evidence.

New evidence includes evidence that has come into existence since the dispute resolution hearing. It also includes evidence which the applicant could not have discovered with due diligence before the hearing. New evidence does not include evidence that could have been obtained, such as photographs that could have been taken or affidavits that could have been sworn, before the hearing took place.

Evidence in existence at the time of the original hearing which was not presented by the party will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through taking reasonable steps, have become aware of the evidence.

On this ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, the applicants have attached a copy of the original decision and other documentation. The applicants submit that at the hearing they were informed that they needed a copy of the law that states the landlord is required to deal with the asbestos in rental properties. The applicant went to BC Housing Design Guidelines and Construction Standards from the same site as Health Link BC where it states such laws. The applicants submit that the issue of a loss of quiet enjoyment was not mentioned in the decision as it was repeatedly brought up during the hearing and was a big reason why the applicants filed their claim. The applicants would like to have this issue reviewed again.

The applicants have provided documentation concerning hazardous material and in particular have highlighted a section concerning tenants in connection to the Owner and BC Housing responsibility's where asbestos is found in a rental unit. The applicants have also provided documents concerning the safe level of asbestos exposure. While I accept that this evidence is relevant to the matter that was before the Arbitrator I am not satisfied that the applicants could not have provided this evidence prior to the original hearing or taken reasonable steps, to have become aware of the existence of this evidence as this evidence appears to be documentation that is readily available to the public. Furthermore I cannot address the issue raised about the tenants' claim that the loss of quiet enjoyment was addressed at the hearing but was not mentioned in the decision. As I was not party to the hearing I am unable to determine what was addressed and what was not addressed or the relevance that the Arbitrator put on the issue of a loss of quiet enjoyment in connection with the tenants claim if it was not contained within the body of the report. This ground for review is not designed to provide parties a forum in which to rebut findings by the Arbitrator or to allege an error of fact or law.

Consequently, the applicants request for a review based on this ground must fail.

Decision Obtained by Fraud

This ground applies where a party has evidence that the decision was obtained by fraud. Fraud is the intentional “false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive”.

Fraud may arise where a witness has deliberately misled the Arbitrator by the concealment of a material matter that is not known by the other party beforehand and is only discovered afterwards. Fraud must be intended. A negligent act or omission is not fraudulent.

On this ground for review, that the Arbitrator's decision was obtained by fraud, the applicants submit that C repeatedly lied during the hearing and said the tenants had a relationship with the landlord when they do not. C said that the applicants did not care about the asbestos until the argument with the landlord. The applicants submit that they were very adamant about having the asbestos removed long before the altercation with the landlord. C also stated at the hearing that she never mentioned knowing the property management company is unable to rent with asbestos in poor condition and did say this to the other applicant that was unable to attend the hearing. C also lied about when they found out about the asbestos as they found out the same day the applicants hotwater tank was replaced as the applicants had text the other property manager in May, 2014.

The applicants submit that C knew this information to be false and clearly lied and withheld information to get a decision in her favor. The applicants submit that all this false information was mentioned in the decision and the applicants have told nothing but the truth and feel taken advantage of as tenants.

A party who is applying for review on the basis that the Arbitrators 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.

I find the applicants have provided insufficient corroborating evidence to support their claim that the decision was obtained by fraud. The applicant AE attended the hearing and could have disputed any testimony given by the landlord at that hearing. Without corroborating evidence to prove false information was provided by the landlord, it is one person's word against that of the other and fails to satisfy the inherent burden of proof.

Consequently, the applicants have failed to prove that a fraud was perpetrated and accordingly, I find that the application for review on this ground must fail. This ground for review is not designed to provide parties a forum in which to rebut findings by the Arbitrator or to allege an error of fact or law.

Decision

The tenants' application for review consideration is dismissed.

The decision made on October 06, 2014 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: November 14, 2014

Residential Tenancy Branch