



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

On October 29, 2014, a hearing was conducted to resolve a dispute between these two parties. Both parties had made application. Both parties were partially successful in their application for Dispute Resolution. The landlord was granted an Order of Possession and both parties were granted a monetary award. The tenants' monetary award, being the lessor, was offset against the landlord's monetary award. The tenants have applied for a review of this Decision and Order.

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 applicant relies 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.

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 applicant has attached a copy of the original decision and has submitted that all the evidence was not considered; no Order of Possession was sought by the landlord; October, 2014 rent was not withheld; the landlord sent the tenant messages on October 31 and November 01, 2014 demanding Novembers rent; Novembers rent was paid in full and by accepting the rent the landlord has reinstated the tenancy.

I have reviewed the evidence submitted for this review consideration, the tenants have only provided a copy of the Decision and Orders; having reviewed the Decision I find the 10 Day Notice was issued for unpaid rent for September, 2014 and the Arbitrator found that rent to still be owing. The tenants did not pay that rent within the five allowable days and therefore are presumed to have accepted the end of the tenancy as indicated in the Decision dated October 31, 2014. The Arbitrator also found that there was no rent outstanding for October and that section of the landlords claim was dismissed and there is no mention of outstanding rent for November. The tenants

attended the hearing and could have presented any evidence to determine reinstatement of the tenancy. I find there is no new evidence presented by the tenants that would have had a material effect on the decision made by the Arbitrator. As the applicant has not provided any new or relevant evidence to support this section of their application for a review I find that the application for review 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.

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.

On this ground for review, that the Arbitrator's decision was obtained by fraud, the applicants allege that the landlord committed fraud by saying that the tenancy agreement was altered and submitted as evidence by the landlord. On October 31 to November 01, 2014 the landlord sent threatening and demanding texts. The tenants

allege that the landlord knew the information was false as the landlord altered the agreement and the tenants never received a copy of the original rental agreement. A one year lease was signed and a month to month agreement was submitted by the landlord. The tenants allege that the false information was used to get the desired outcome to force the tenants to pay utilities that were not part of the original agreement dating back two years.

I have reviewed this application and find the tenants have provided insufficient documentary evidence to support their allegation that the landlord submitted false evidence for the hearing. Consequently, I find the application discloses insufficient evidence that the decision under review was obtained by fraud; and therefore, fails to satisfy the inherent burden of proof. The applicant has 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 31, 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 21, 2014

Residential Tenancy Branch