



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

This application was filed by the tenants, requesting a review consideration of the Decision made on September 25, 2014.

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 tenants have applied based on ground 2 and 3 for review consideration.

Issues

Do the tenants have new and relevant evidence that was not available at the time of the original hearing?

Do the tenants have evidence the director's decision or order was obtained by fraud?

Facts and Analysis

Ground #2 - New and relevant

The tenants write in their application that they have new and relevant evidence that was not available at the time of the hearing,

"Statement from [CS] re:Delivery of Final Notice Letter"

[Reproduced as written.]

The Residential Tenancy Policy Guideline #24 defines new evidence as 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 dispute resolution hearing.

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.

In this case, the tenants have provided a witness letter dated October 29, 2014, however, this witness letter could have obtained and present at the time of the original hearing. The tenants further refer to provision of color evidence and a 2nd package of evidence which they did not receive. However, it appears they are simply rearguing the case. This is not an opportunity to reargue the case. Therefore, I find the tenants have failed to prove new and relevant evidence.

Fraud

Fraud must be intended. An unintended negligent act or omission is not fraudulent. Intentionally providing false testimony would constitute fraud, as would making changes to a document either to add false information, or to remove information rendering the document false. Fraud may arise where a witness has deliberately misled the proceeding by the concealment of a material matter that is not known by the other party beforehand and is only discovered afterwards

In this case, the tenants argue that the testimony of the landlord was fraudulent.

At the original hearing the tenants testified that,

“The tenants also testified that they hand delivered a letter of May 28 advising the landlords that they were ending the tenancy effective May 31. They moved out May 31. They submit that their forwarding address was contained in that letter.”

[Reproduced as written.]

At the original hearing the landlord testified that,

“The landlords testified that they did not receive the letter of May 28, 2014 and only learned of the tenants’ forwarding address from the Application for Dispute Resolution.”

[Reproduced as written.]

In this case the tenants refer to the witness statement of CS, however, the statement of CS conflict with the tenants' verbal testimony at the original hearing. At the original hearing the tenants testified that the document was hand delivered. The statement of CS confirms they were unable to serve the documents as the landlord did not attend at the intended time. The statement of CS confirms the landlords' testimony that they did not receive the letter of May 28, 2014.

Further, the tenants' written submission in their application for review consideration conflicts with the tenants' original testimony and further confirms the landlords testimony, that they did not receive the letter of May 28, 2014, as the tenants write in their application that,

“the landlord knew of the Final Notice and chose not to pick it up”

[Reproduced as written.]

[My emphasis added.]

The Arbitrator made a decision based on the evidence presented at the hearing. This is not an opportunity for the tenants to reargue the case. Therefore, I find the tenants have failed to prove the decision or order was based on fraud.

Decision

Based on the above, the application and on a balance of probabilities, I find the tenants application for review consideration must be dismissed.

Therefore, I find the Decision and orders made on September 25, 2014 stand and remain in full force and effect. The tenants' application for review is dismissed.

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 07, 2014

Residential Tenancy Branch