



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

On October 14, 2014, a hearing was conducted to resolve a dispute between these two parties. The tenant had applied to dispute the amount of rent being charged for the park pad. Both parties attended the hearing. The Arbitrator granted the tenant's application. The landlord has applied for a review of this decision.

Division 2, Section 72(2) under the *Manufactured Home Park 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 applicant relies on sections 79(2)(b) and (c) of the *Residential Tenancy Act* (the "Act"). Section 79(2) (b) provides that the director may grant leave for review if a party has new and relevant evidence that was not available at the time of the original hearing. Section 79(2)(c) provides that the director may grant leave for review if a party has evidence that the arbitrator's decision or order was obtained by fraud.

Issues

Does the applicant have new and relevant evidence that was not available at the time of the hearing? Does the applicant have evidence that the Arbitrator's decision 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 or she has evidence that was not available at the time of the hearing;
- the evidence is new,
- the evidence is relevant to the matter before the Arbitrator,
- the evidence is credible, and

- the evidence would have had a material effect on the decision.

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

On the ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, the applicant states *"My daughter Y.S. received from a realtor A.E. Pad #63 a mobile home sale advertisement document by fax, was 23 October 2014 and gave me a copy was 24 October 2014 and showing that the lot size are large lot is a great place to park the RV Play with the pets or relax and take in the views on the deck"*.

The applicant attached a copy of the listing and explains that the listing indicates that the lot size is large. The applicant also denies having subdivided the lot and states that the Arbitrator's decision to reduce the rent is wrong.

On the ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, I find that the evidence provided by the landlord is a listing which he received on October 25, 2014, approximately three weeks after the hearing on October 03, 2014. The applicant does not explain how the description of the mobile home and the lot that it is located on is relevant to the decision and how it would have changed the decision if the listing was before the Arbitrator at the time of the hearing. The listing describes the lot as large but does not prove that the landlord did not subdivide or reduce the size of the lot for the current tenant.

I find that the applicant has not provided any new evidence that is relevant to the decision and could have had an effect on the decision and therefore has failed to meet the test to establish grounds for review in this tribunal and accordingly, 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 Arbitrator's decision was obtained by fraud. 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 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.

On this ground for review, that the Arbitrator's decision was obtained by fraud, the applicant states that the tenant committed fraud by testifying that the lot size was reduced when the landlord subdivided the lot and moved another trailer onto the lot.

With respect to the matters the applicant asserts are fraudulent, they were not matters unknown to the applicant at the time of the original hearing. They were in existence and could have been

addressed at the original hearing. The applicant may disagree with the Arbitrator's findings of fact, but he had an opportunity to respond to the tenant's evidence at the hearing.

The applicant has not provided me with new evidence to support the allegation that the decision under review was obtained by fraud. The applicant has not proven any new or newly discovered material facts and how that evidence could have been a significant factor in the making of the decision.

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.

Upon review of the landlord's application for a review hearing I find that the applicant is attempting to reargue his case.

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, but to provide evidence which could not have been presented at the time of the hearing because it was not in existence at that time.

The application discloses insufficient evidence that the decision under review was obtained by fraud; and therefore, fails to satisfy the inherent burden of proof. Accordingly, I find that the application for Review on this ground must also fail.

The applicant is free to apply for judicial review in the Supreme Court, which is the proper forum for bringing allegations of error.

Therefore, I dismiss the application for Review and confirm the original decision dated October 14, 2014.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: November 12, 2014

Residential Tenancy Branch