



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

This is an application filed by the tenant for review of the October 9, 2015 decision of an arbitrator. The applicant relied on sections 79(2)(b) and (c) of the *Residential Tenancy Act* (the “Act”) which provide 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, or if the party has evidence that the decision was obtained by fraud.

The decision under review was the outcome of an application by the tenant to cancel a Notice to End Tenancy and for an order for the performance of emergency repairs. In the decision under review the landlord was granted an order for possession effective two days after service on the tenant and the tenant's application for a repair order was dismissed.

In his application for review consideration the tenant claimed to have new and relevant evidence that was not available at the time of the original hearing. He submitted eight pages of printouts of his account records from his cell phone provider that referred to usage during the months of August and September, 2015. He submitted three pages of handwritten submissions, said to be details concerning his eviction from the rental unit. The submission was dated Sept 11/15 and it was a duplicate of a submission filed as evidence on the original application. The tenant provided another hand written submission dated Sep. 29/15; it too was a duplicate of a submission filed as evidence by the tenant before the original hearing. The tenant also submitted a USB flash drive containing images of text messages and photos and videos of what were said to be temperature readings taken inside the rental unit. The flash drive also included photographs of notes and letters to the landlord.

The tenant submitted an undated two page handwritten document. The document consisted of arguments and submissions to the arbitrator concerning the findings of fact in the original decision.

In his application for review consideration the tenant said that the new and relevant evidence consisted of:

See document(s) attached Labeled (A) also (B) also (C)

Also none of my original evidence made it to Hearing I'm sorry but I faxed it to wrong number.

The tenant submitted that he has new and relevant evidence, not available at the time of the original hearing, but much of the supposedly new evidence was submitted before the original hearing and the tenant has acknowledged that some of his evidence was faxed to an incorrect number. The policy guideline with respect to review consideration applications contains the following passage:

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.

The issues raised by the tenant on this review were known to him before the hearing on October 8th and it was incumbent upon him to collect and submit all the relevant and available evidence before the hearing. The review process is not intended to provide the parties with an opportunity to reargue matters dealt with at the original hearing, or to submit additional evidence that could have been, but was not provided. I find that the tenant has not shown that he has new and relevant evidence that was not available at the time of the original hearing and the Review Consideration Application is denied on this ground.

The tenant's further ground for requesting a review is based on his assertion that the Arbitrator's decision or order was obtained by fraud. In the review application he referred to his hand written submissions and said that:

They said they strove mightily to contact me they didn't not once on 28th I would've came home immediately I was two blocks away.

In the decision under review the Arbitrator considered the tenant's testimony on this matter. At page 2 of her decision she said:

On August 28, 2015 the Landlord attended at the Tenant's unit asking to be let in as a leak in the ceiling had occurred in the unit below the Tenant's unit. The Tenant refused entry. The Landlord informed the Tenant that a plumber was called and that the Landlord needed entry into the unit. The Tenant then left the

unit and did not provide a key to the Landlord. The Tenant states that he had to leave for work. The Landlord submits that after several attempts to reach the Tenant the Landlord called a locksmith and entered the unit to find an overflowing toilet. The Tenant denies receiving any calls from the Landlord. The Landlord states that following this entry the locks were again changed by the Tenant and at the hearing the Tenant continued to refuse to provide a key to the Landlord.

With respect to allegation of fraud, the Residential Tenancy Policy Guideline #24 concerning Review applications contains the following passage:

Decision obtained by fraud

Fraud is the intentional use of false information to obtain a desired outcome.

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.

The application for the review consideration must be accompanied by sufficient evidence to show that false evidence on a material matter was provided to the RTB, and that this evidence was a significant factor in the making of the decision. The application package must show the newly discovered and material facts were not known to the applicant at the time of the hearing, and were not before the RTB. The application package must contain sufficient information for the person conducting the review to reasonably conclude that the new evidence, standing alone and unexplained, supports the allegation that the decision or order was obtained by fraud.

A review may be granted if the person applying for the review provides evidence meeting **all three** of the following tests:

1. information presented at the original hearing was false;
2. the person submitting the information knew that it was false; and,
3. the false information was used to get the outcome desired by the person who submitted it.

The tenant has not alleged any new and material facts or a newly discovered and material fact in support of his claim that the decision under review was obtained by fraud. The issues raised in this review consideration application involve facts known to the applicant at the time of the original hearing. The review application amounts to an attempt to re-argue matters dealt with at the original hearing; I find that the tenant has not provided new evidence, unavailable at the time of the original hearing that would permit me to conclude that the decision was obtained by fraud. The tenant's application for review consideration on the ground that the arbitrator's decision was obtained by fraud is denied.

For the above reasons I dismiss the application for review consideration. The original decision and order dated October 9, 2015 are confirmed.

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: October 26, 2015

Residential Tenancy Branch

