



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN, MNDCL-S, FFL

Introduction

This was a review hearing on the Tenants' application for review based on fraud by the Landlord.

The Landlord originally applied for:

- An Order of Possession based on the Tenants' notice to vacate
- Compensation
- To recover the filing fee

The original hearing occurred before me February 07, 2023, and the original Decision was issued February 08, 2023. The Tenants did not appear at the original hearing. J.L. appeared at the original hearing for the Landlord. The Landlord was issued an Order of Possession based on the Tenants' notice to vacate. The Landlord was awarded some compensation and the filing fee. The original Decision should be read with this Decision.

At the review hearing, the Tenants appeared with the Advocate. J.L. appeared for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing. The parties provided affirmed testimony.

With their review application, the Tenants provided written submissions, a "Notice: Renewal of Tenancy Agreement", emails and their notice to vacate. The Arbitrator who granted the review hearing relied on the "Notice: Renewal of Tenancy Agreement" and stated:

Therefore, I find there is sufficient evidence to demonstrate that the original decision may have been obtained by fraud as I find there is uncertainty as to whether a new tenancy was formed based on the document above. Therefore, I find it is necessary to order this matter back to the original arbitrator for a limited scope hearing for the sole purpose of determining if the September 10, 2022 letter described above proves fraud and if so, would this have changed the arbitrator's decision.

I order that a limited scope Review Hearing take place to determine whether the document included above supports fraud and if so, the arbitrator will determine whether to confirm, vary or set aside their original decision. Give the above, the decision and order(s) issued on date of February 8, 2023, are suspended until that limited scope Review Hearing is completed by the original arbitrator, K. Selbee.

The review hearing came before me March 28, 2023.

I addressed service at the review hearing and no issues that impact this Decision arose.

Issue to be Decided

1. Have the Tenants proven fraud?

Background and Evidence

The Tenants agree with the tenancy agreement details set out in the original Decision.

The Tenants rely on the "Notice: Renewal of Tenancy Agreement" as a basis for review. However, it came to light at the review hearing that the following occurred:

- The Tenants provided their notice to vacate
- The Tenants sought to cancel/withdraw their notice to vacate
- The Landlord did not agree to the Tenants cancelling/withdrawing their notice to vacate but offered the Tenants a new tenancy agreement at a higher rent amount, as shown in the "Notice: Renewal of Tenancy Agreement"
- The Tenants declined the offer of a new tenancy agreement at a higher rent amount, as shown in the "Notice: Renewal of Tenancy Agreement"

The Tenants and Advocate take issue with the Landlord not submitting the “Notice: Renewal of Tenancy Agreement” for the original hearing. Neither the Advocate nor the Tenants could explain how the “Notice: Renewal of Tenancy Agreement” being before me would have changed the original Decision. Nor could the Advocate or Tenants explain why the Landlord was not entitled to continue to seek an Order of Possession based on the Tenants’ notice to vacate given the facts outlined above.

The Advocate also said one of the Landlord’s resident managers told the Tenants not to worry, the Landlord did not want to evict them and was not proceeding with the eviction. The Advocate said Tenant H.A. could testify to this. The Advocate and Tenants had not contacted the resident manager to obtain evidence from them or have them appear at the hearing. The Advocate and Tenants had not asked the Landlord to have the resident manager appear at the hearing. The Advocate said they thought the resident manager would appear at the hearing but could not explain why in the absence of them asking the Landlord to have the resident manager appear. The Advocate sought an adjournment of the review hearing to have the resident manager attend.

The Advocate and Tenants attempted to raise other issues, for example that the Landlord did not issue receipts for “use and occupancy only” after the Tenants gave their notice to vacate. The other issues raised are not related to the allegation of fraud, which is the issue before me.

J.L. says they did not submit the “Notice: Renewal of Tenancy Agreement” for the original hearing because the Tenants did not accept it so it was not relevant.

J.L. said they are not aware of a conversation between the Tenants and a resident manager where the Tenants were told the Landlord would not evict them.

Analysis

Section 81 of the *Act* states:

81 (1) At any time after an application for review of a decision or order of the director is made, the director may dismiss or refuse to consider the application for one or more of the following reasons...

(b) the application...

(ii) does not disclose sufficient evidence of a ground for the review,

(iii) discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied...

The Tenants have not proven fraud. The "Notice: Renewal of Tenancy Agreement" would not have impacted my original Decision because the Tenants did not agree to it and therefore did not enter a new tenancy agreement with the Landlord. The Landlord was entitled to continue to seek an Order of Possession based on the Tenants' notice to vacate. There is no evidence before me of J.L. intentionally misrepresenting facts at the original hearing. The Landlord not submitting an irrelevant document is not fraud.

It is not enough for the Tenants to allege fraud without evidence from the resident manager. The Tenants must submit credible and convincing evidence of fraud, which has not been done. The Tenants are not entitled to an adjournment of the review hearing when they took no steps to get evidence from the resident manager before the hearing.

The Tenants have failed to prove fraud and are not entitled to a new hearing on the original application. The review application is dismissed without leave to re-apply. The original Decision and Order are confirmed.

Conclusion

The original Decision and Order 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 *Act*.

Dated: March 31, 2023

Residential Tenancy Branch