

REVIEW DECISION

Introduction

The Landlord has applied for review of the arbitrator's decision and order issued as the result of a dispute resolution hearing held on December 11 2008.

Issues to be Decided

The Landlord has requested a new dispute resolution hearing based on two grounds; that the party has new and relevant information that was not available at the time of the hearing and, that the Landlord has evidence that the arbitrator's decision or order was obtained by fraud.

Background and Evidence

The Landlord application for review indicates that the Tenant served them with an incomplete hearing package, which failed to include the pages referencing respondent responsibilities related to the submission of evidence for use during the hearing. The Landlord submits that if they had been aware of the need to submit evidence at least 5 days in advance of the hearing they would have complied. The Landlord has included with the request for review 6 letters related to either the Tenant's departure from the rental unit and/or his belongings.

The Landlord submits that the Tenant statement that he owned the microwave and other items documented in the decision is fraudulent.

Analysis

A party has new and relevant evidence that was not available at the time of the original hearing.

Further to the argument above and the Landlord assertion that they were unaware of the evidence submission requirements, it appears that the Landlord failed to take note of the information which is included on the notice of dispute resolution hearing which states: *before the hearing date, both the applicant and respondent must give each other, and the Residential Tenancy Branch (RTB), a copy of all their evidence. The deadlines for evidence are in the attached hearing package.*

If the pages describing the rules of evidence were missing from the package I have determined that, given the information on the notice of dispute resolution hearing, it would be reasonable for the Landlord to have called the RTB to request details related to evidence submission. The Landlord has indicated that they have made mistakes in the past as to filling out the correct forms, and I do accept that dealing with unfamiliar forms can require a heightened level of attentiveness. However, I do not accept the Landlord submission that their failure to submit copies of their evidence falls to the Tenant. By virtue of attending the hearing, the Landlord has demonstrated that service of the notice of a dispute resolution hearing occurred and that the Landlord would have been aware of the need to investigate evidence rules prior to the hearing. Further, the onus of burden of proof is on the party making a claim to prove the claim and I am not satisfied that the Landlord did not, in fact, receive the evidence submission information.

On this basis I deny the Landlord application for a review as they have not shown that they have new and relevant evidence that was not available at the time of the original hearing.

A party has evidence that the director's decision or order was obtained by fraud

Further to the argument above the Landlord submits that the Tenant has failed to be honest in his testimony and that his failure to be honest has resulted in a decision based upon fraud. The person requesting the review must be able to prove that evidence presented by the other party was false and that it was a significant factor in the decision. Fraud is the intentional false representation of a matter of fact that deceives and is intended to deceive. Fraud can be carried out by words or by conduct, by false or misleading allegations, or by concealment of information or evidence that should have been disclosed. Intentional false testimony would constitute fraud, as would making changes to a document either to add false information or to remove information that would tend to disprove one's case.

A letter submitted with the review request dated December 10 2008 is signed by the individuals who attended the dispute resolution hearing on behalf of the Landlord; therefore these individuals were free to provide testimony which formed the evidence contained in this letter. I have determined that the Landlord representatives were not hindered from providing oral testimony which could have been taken into account by the dispute resolution officer during the hearing.

There are no grounds showing that fraud occurred in this matter. Therefore, I deny the request for a review under this category.

Conclusion

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:

(a) the issue raised by the application can be dealt with by a correction, clarification or otherwise under section 78 [correction or clarification of decisions or orders];

(b) the application

(i) does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely,

- (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, or*
- (iv) is frivolous or an abuse of process;*

It is my determination in review of this application that the Landlord request for review does not disclose sufficient evidence of a ground for the review and should be rejected, therefore I deny this application.

The original decision and Order of December 11 2008 stand and remain enforceable.

With this decision I have enclosed a copy of A Guide for Landlords and Tenants in British Columbia for each party.

Dated January 15, 2009.