



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNSD

Introduction

This is an application filed by the landlord on May 3, 2012 for review of a Dispute Resolution Officer decision and order dated April 24, 2012, on the above noted matter.

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.

Issues

In this matter the landlord relies on the third grounds; information that the director's decision was obtained by fraud.

Facts and Analysis

The landlord submits repeatedly that he never received the notice of a dispute resolution hearing, as claimed by the tenant during the hearing that it was sent by registered mail.

The landlord provided a receipt signed by the tenant on November 14, 2011, showing that the tenant received her security deposit in full.

The landlord also provided a copy of a document from the tenant's lawyer, wherein the lawyer refers to a hearing scheduled for April 18, 2012, and not April 24, 2012.

Decision

Residential Tenancy Policy Guideline #24 addresses the grounds for review. Concerning fraud the guideline states in part:

“A party who is applying for review on the basis that the dispute resolution officer’s decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the dispute resolution officer, and that the evidence was a significant factor in the making of the decision. The party alleging fraud must allege and prove new and material facts, which were not known to the applicant at the time of the hearing, and which were not before the dispute resolution officer, and from which the dispute resolution officer conducting the review can reasonably conclude that the new evidence, standing alone and unexplained, would support the allegation that the decision was obtained by fraud. The burden of proving this issue is on the person applying for the review. If the dispute resolution officer finds that the applicant has met this burden, then the review will be granted.

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.”

The copy of a receipt for the return of the security deposit does not constitute evidence of fraud, as it could have been presented during the original hearing had the landlord been in attendance. The landlord’s receipt can be better characterized as new and relevant evidence. At issue is whether the landlord provided sufficient evidence to establish that he was unable to attend the original hearing; I find that the landlord’s explanation on these grounds should not be based solely on information obtained by fraud, but also for circumstances that could not be anticipated and were beyond the landlord’s control.

The landlord does not provide more details under his application for review other than he did not receive the notice of a dispute resolution hearing scheduled for April 24, 2012. The landlord acknowledged receipt of a document from the tenant’s lawyer that made reference to a hearing scheduled for April 18, 2012, although the actual date of the hearing was April 24, 2012. The landlord provides no explanation as to when he received the lawyer’s letter, and what action, if any, he took when he received information of an impending hearing.

Section 81 of the Act provides in part that the director may dismiss or refuse to consider an application for review if the application does not disclose sufficient evidence of a ground for the review. The burden is on the landlord to prove that the circumstances could not be anticipated and were beyond his control. I find in this application that the landlord’s reasons are non-specific, lack detail, and that he did not provide sufficient evidence and on that basis the application must fail.

Conclusion

The decision made on April 24, 2012 is hereby 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: May 22, 2012.

Residential Tenancy Branch