



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes MND, MNDC, FF

Basis for Review Consideration

Section 79(2) of the Residential Tenancy Act (Act) states that 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.

Applicant's Submission

The application for review consideration states the decision should be reviewed on the ground of the original decision was obtained by fraud.

Analysis

To prove an allegation of fraud the parties must show that there was a deliberate attempt to subvert justice. 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 party alleging fraud must allege and prove new and material facts, or newly discovered and material facts, which were not known to the applicant at the time of the hearing, and which were not before the Arbitrator, and from which the Arbitrator conducting the review can reasonably conclude that the new evidence, standing alone and unexplained, would support the allegation that the decision or order was obtained by fraud. 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.

The tenants allege that the decision was obtained fraudulently, however they have supplied insufficient evidence to support their claims of fraud. The majority of their evidence is just an attempt to re-argue the case and this is evidence they could have provided had they appeared at the original hearing. The applicants have provided no evidence to show that they were unable to attend the original hearing, and the review process is not an opportunity to reargue the case.

Further some of the evidence they supplied alleges that the landlord was aware that they had a legal Health Canada Medical Marijuana Grow Operation located in the premises, however right in the arbitrator's decision the arbitrator states "While I am unable to make any finding on whether or not this property was used for a grow operation, it is not necessary in any event, as I am satisfied that the tenants cause significant damage to the property which they did not repair prior to vacate the property." Therefore since the arbitrator's decision was not based on whether or not there was a grow operation; the decision would be no different if the landlord had been aware that the tenants had a legal Health Canada Medical Marijuana Grow Operation located in the premises.

Conclusion

I dismiss the Application for Review Consideration. The original decision and order(s) made on April 12, 2013 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: May 06, 2013

Residential Tenancy Branch