



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC

Introduction

This is an application by the landlord for a review of a decision of the director dated June 3, 2013.

The landlord applied for a review on the grounds that he has new and relevant evidence that was not available at the time of the original hearing; and he has evidence that the director's decision or order was obtained by fraud.

Issues

Has the landlord provided sufficient evidence to support one of the indicated grounds for review?

Facts and Analysis

Original Hearing and Decision

The original hearing was convened on May 28, 2013 pursuant to the tenant's application dated May 1, 2013 to cancel a notice to end tenancy for cause. At the outset of the hearing, the landlord stated that they had served the tenant with 21 pages of evidence on the same morning as the hearing. The landlord did not want the hearing to be adjourned. The arbitrator declined to consider that documentary evidence. Both the landlord and the tenant were given full opportunity to give testimony in the hearing. In the decision dated June 3, 2013, the arbitrator considered all the evidence of the landlord and tenant and found that the landlord had not provided sufficient evidence to establish cause to end the tenancy pursuant to the notice to end tenancy for cause served April 24, 2013.

Landlord's Submissions

In the application for review, the landlord stated that since the hearing, things had been going from bad to worse. The landlord stated that on June 1, 2013 the tenant deliberately accelerated her truck and hit the landlord; on June 12, 2013 there was a

theft from the property; and since the hearing the tenant and other occupants have continued to create noise disturbances.

In regard to the claim of fraud, the landlord stated that the tenant perjured herself when she claimed she only has three friends come over on occasion.

Analysis on Review

The additional evidence that the landlord submitted in his review application refers to alleged incidents that occurred after the hearing took place. Those incidents may form the grounds for the landlord to either serve the tenant with a new notice to end tenancy for cause or apply for an early end of tenancy, but they cannot be used as evidence for a review of the original hearing. I therefore find that the landlord is not entitled to a review on the ground of new and relevant evidence.

In regard to the claim of fraud, I find that the landlord's submissions in this application for review consideration merely consist of arguments that the landlord had the opportunity to present during the hearing. The arbitrator determined that the landlord had not provided sufficient evidence to establish cause to end the tenancy. The landlord served the notice to end tenancy on April 24, 2013, and the tenant applied to cancel the notice on May 1, 2013. The landlord therefore had sufficient time to submit and serve evidence to establish cause. Alternately, the landlord could have requested an adjournment, but chose not to do so. When a tenant applies to cancel a notice to end tenancy, the landlord has the burden of proof to establish that the notice is valid. I therefore do not accept the landlord's claim that the arbitrator's decision was obtained by fraud.

Decision

I dismiss the application for review and confirm the original decision of June 3, 2013.

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: June 17, 2013

Residential Tenancy Branch