



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNSD

Introduction

The dispute resolution hearing was held on June 12, 2013 and the decision and order were issued on that same date.

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

The issue is whether or not the original decision was obtained by fraud.

Facts and Analysis

The application contains information under Reasons Number 3

The applicant is claiming that the Arbitrator's decision was obtained by fraud because at the original hearing the tenants told the Arbitrator that they had sent two letters to the landlord requesting the return of their security deposit and providing the forwarding address, when in fact only one letter was sent to the landlord dated February 4, 2013 and was mailed to the rental unit not to the landlord's address.

Further at the original hearing the tenants withheld the fact that they did not pay the utilities for a number of months or prove that the utility Bill had been paid.

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.

In this case the landlord was aware of the above facts at the time of the original hearing and could well have made these arguments to the original Arbitrator.

Therefore it's my finding that the applicant has not met the burden of proving that the original decision was obtained by fraud.

Further at the original hearing the landlord claimed that he had retain the security deposit to cover \$2000.00 in damages caused by the tenants, however since the landlord admitted that he had never completed a move in inspection report, the landlord had waived the right to claim against the security deposit for damages and therefore was required to return the security deposit within 15 days of receiving a forwarding address in writing.

The landlord states in this application for review that he received the forwarding address from the tenants in late March of 2013, and therefore the security deposit should have been returned well before the dispute resolution hearing.

Therefore based on the landlord's own testimony, the landlord was required to pay double the security deposit.

Decision

This application for review is dismissed.

The decision and orders issued on June 12, 2013 stand.

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 27, 2013

Residential Tenancy Branch