



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

On June 27, 2013, a hearing was conducted after the tenants filed an application to set aside a One Month Notice to End Tenancy. The tenants attended the hearing but were unsuccessful with their application and the landlord orally requested and subsequently received an Order of Possession effective two days after service. The tenants have applied for a review of that decision and Order.

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 applicant relies on sections 79(2) (a) and (c) of the *Residential Tenancy Act* (the "Act"). That the party was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the party's control. The party has evidence that the arbitrator's decision or order was obtained by fraud. The tenant has also requested an extension of time to apply for the review.

Facts and Analysis

Extension of time

The tenants submit that they originally applied for the review on July 02, 2013 however the documents were faxed to the wrong number by the Service BC office and when the tenants realized this they called the RTB and resubmitted the documents.

The tenant's application shows the original date stamp for July 02, 2013 and another date stamp as of July 09, 2013. I will therefore allow the tenants request for more time to file their application for review consideration.

Unable to Attend

The tenants did attend the hearing held on June 27, 2013; therefore this section would not apply. I am unable to read the tenants submissions documented in this section on their application as they are not all clear enough to decipher. The tenant have also submitted three other pages of text which has no bearing on why the tenants could not attend the hearing as the tenants both did attend the hearing. These pages appear to be an attempt to reargue the findings made by the Arbitrator at the original hearing.

Decision Obtained by Fraud

This ground applies where a party has evidence that the decision was obtained by fraud. Fraud is the intentional "false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive".

Fraud may arise where a witness has deliberately misled the Arbitrator by the concealment of a material matter that is not known by the other party beforehand and is only discovered afterwards. Fraud must be intended. A negligent act or omission is not fraudulent.

A party who is applying for review on the basis that the Arbitrators 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.

On this ground for review, that the Arbitrator's decision was obtained by fraud, the applicants have provided no evidence to show that the Arbitrators decision was obtained by fraud. The application submitted is difficult to read as the text is unclear. I refer the tenants to s. 81(1)(b) of the *Act* which 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:

(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,

The application discloses insufficient evidence that the decision under review was obtained by fraud; and therefore, fails to satisfy the inherent burden of proof. The applicant has failed to prove that a fraud was perpetrated and accordingly, I find that the application for review on this ground must fail.

This ground for review is not designed to provide parties a forum in which to rebut or argue findings by the Arbitrator or to allege an error of fact or law.

Decision

The tenants' application for review is dismissed.

The decision made on June 27, 2013 stands.

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: July 26, 2013

Residential Tenancy Branch